This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

UL
PL

Wharton, John Jane Smith

WHARTON'S LAW-LEXICON:

FORMING

AN EPITOME OF THE LAW OF ENGLAND;

AND CONTAINING

FULL EXPLANATIONS OF THE TECHNICAL TERMS AND PHRASES THEREOF, BOTH ANCIENT AND MODERN.

INCLUDING THE VARIOUS

LEGAL TERMS USED IN COMMERCIAL BUSINESS;

TOGETHER WITH

A Translation of Latin Law Maxims,

AND SELECTED TITLES FROM

THE CIVIL, SCOTCH, AND INDIAN LAW.

THE NINTH EDITION.

BY

J. M. LELY, ESQ., M.A.,

BARRISTER-AT-LAW,

EDITOR OF 'WOODFALL'S LANDLORD AND TENANT,' ETC.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers and Booksellers.

1892.

Printed by Hazell, Watson, & Viney, Ld., London and Aylesbury.

PREFACE TO THE NINTH EDITION.

THE last edition of this work was issued in March 1889. Since that time, besides many other important statutes, the Arbitration Act and the Interpretation Act have been passed in 1889, the Lunacy and Partnership Acts in 1890, and the Penal Servitude Act, the two Stamp Acts, and the Tithe Act in 1891. The effect of all new statutes of practical utility has been given, and particular attention has been paid to the Interpretation Act.

The articles 'Bar Committee,' 'Inns of Court,' and 'Incorporated Law Society' have also been much enlarged, and new Consolidated Regulations of the Inns of Court, which were issued in May last, are printed in their entirety.

The revision of the article on Husband and Wife has brought much difficulty with it in connection with *Jackson's case* [1891], 1 *Q. B.* 471. A dissertation on that case would have been unsuited to the Lexicon, but it was necessary to call attention to its supposed conflict with older authorities. Since the article went to press, however, the Editor's attention has been called by his friend Mr. Geary to the following important passage in the judgment of Dr. Lushington, in *Lockwood* v. *Lockwood*, 2 *Curteis*, at p. 301 :—

"I think this proceeding [of a husband forcibly entering and taking possession of the house in which his wife resided, after a separation *de facto* of above three years] wholly unjustifiable; I know of no right which, under the circumstances, a husband possesses to take the law into his own hands, to supersede the established tribunals, and to attempt to do himself what he thinks justice by force of arms. If such measures are permitted, suits for the restitution of conjugal rights may at once be abolished, and the *ipse dixit* of the husband substituted for the decree of the Court of Justice, the husband being his own judge and executing his own sentence. One of the most certain consequences of such proceedings might be a breach of the peace."

J. M. LELY.

3, PAPER BUILDINGS, TEMPLE,

February 22nd, 1892.

PREFACE TO THE SEVENTH EDITION.

THE first edition of this well-known work was brought out in 1848, the second in 1860, the third in 1864, the fourth, by the late Mr. Brandt, in 1867, and the fifth and sixth by Mr. Shiress Will in 1872 and 1876. Mr. Will subjected the work to a thorough revision, and added as many as five hundred and fifty articles.

The present editor has endeavoured, in addition to bringing the various articles up to date of publication, to effect improvements. By expunging matter which appeared to be out of place, such as the medical details which were to be found under the articles 'combustibility,' 'mental alienation,' and 'poisons,' by abstracting statutes, and abridging or omitting Rules of Court which were set out in full, and by cutting down some few articles which ran too much into detail, the bulk of the Lexicon has been reduced by nearly one hundred and fifty pages, notwithstanding the many additions that it has been deemed necessary or desirable to make.

The additions and alterations have not been confined to subjects upon which new legislation has taken place or cases been decided, but have been extended much further:—e.g., the articles on Audit, Intoxicating Liquors, Quiet Enjoyment, Schools, Solicitors, Compensation for Tenants' Improvements, and Stamp Duties, have been newly inserted, amplified, or re-written, the editor's object being to make the book more useful to the practitioner without being any less so to the student.

Articles on the subjects of the Bills of Exchange Act, the Married Women's Property Act, the Settled Land Act, and all the other important statutes of 1882, have been inserted in their proper places.

The editor wishes to acknowledge his obligations to *Bouvier's Law Dictionary*, to *Bell's Law Dictionary*, and to *Wilson's Indian Glossary*, and to many friends and correspondents for various valuable suggestions.

J. M. LELY.

THE TEMPLE,
April 1883.

WHARTON'S LAW LEXICON.

A—ABA

A. This letter is frequently used as an abbreviation or as a mark of reference, for the purpose of identification. It was inscribed upon a ballot, and stood for '*antiquo*,' I vote against. It was used by the Romans, who voted against a proposed law or candidate for office. See U. R.

A ballot or waxen tablet, similarly inscribed, was also used in their Courts of Judicature, being the initial letter of '*absolvo*,' I acquit (not guilty).

A 1. An expression signifying a first-class vessel excellently built.—*Shipping term.*

Ab, at the beginning of English-Saxon names of places, is generally a contraction of *Abbot* or *Abbey;* whence it is inferred that those places once had an abbey, or belonged to one elsewhere, as Abingdon in Berkshire.—*Blount's Law Glos.*

Abacot, the name of the ancient cap of state worn by the kings of England. It was made in the shape of two crowns.—*Chron. Angl.* 1463; *Spelm.*

Abactor [fr. *abigo*, Lat.], a stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from *fur*, a person who steals a single beast only.—*Encyc. Lond.*

Abalienate (V.A.), to make over to another.—*Civil Law.*

Abalienation [fr. *abalieno*, Lat.], a making over of realty, goods, or chattels, to another, by due course of Law.—*Ib.*

Aballaba, the ancient name of Appleby in Westmoreland.

Abandonee, one to whom anything is relinquished.

Abandonment [fr. *abandonner*, Fr.], the relinquishment of an interest or claim.

(2) The relinquishment by an assured person to the assurers of his right to what is saved out of a wreck, when the thing insured has, by some of the usual perils of the sea, become practically valueless. Upon abandonment, the assured is entitled to call upon the assurers to pay the full amount of the insurance, as in the case of a total loss. The loss is in such case called a constructive total loss.

Also the surrender of his property by a debtor for the benefit of his creditors.

The Civil Law permitted a master who was sued for his slave's tort, or the owner of an animal who was sued for an injury done by it, to abandon the slave or animal to the person injured, and thus relieve himself from further liability.

Abandun, or **Abandum,** anything sequestered, proscribed, or abandoned. *Abandon,* i.e., *in bannum res missa,* a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake,* as lost and gone.—*Cowel.* Pasquier thinks it a coalition of *a ban donner,* to give up to a proscription, in which sense it signifies the ban of the empire. *Ban,* in the old dialect, signifies a curse; and to *abandon,* if considered as compounded of French and Saxon, is exactly equivalent to *diris devovere.*

Ab antiquo, of an ancient date.

Abarnare [fr. *abarian*, Ang.-Sax., *denudo, detego*, Lat.], to lay bare, discover, detect. Hence, *æbere theof*, a detected or convicted thief; *æbere morth*, a detected homicide. Also to detect and discover any secret crime to a magistrate.—*Ancient Laws and Institutes of England; Leg. Canuti*, c. 104.

Ab assuetis non fit injuria. Jenk. Cent. Rep. (From things to which we are accustomed, no legal wrong results.)

Compare the maxim '*Vigilantibus, non dormientibus, jura subveniunt.*'

Abatamentum, Abatement, an entry by interposition.—1 *Inst.* 277.

Abate [fr. *abbattre*, Fr.], to prostrate, break down, remove, or destroy; also to let down or cheapen the price in buying or selling.—*Encyc. Lond.* See ABATEMENT.

Abatement, a making less, used in seven senses:—

(1) Abatement of *Freehold.* This takes place where a person dies seised of an inheritance, and, before the heir or devisee enters, a stranger, having no right, makes a wrongful

entry, and gets possession of it. Such an entry is technically called an abatement, and the stranger an abater. It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. *Abatement* differs from *intrusion*, in that it is always to the prejudice of the *heir* or immediate *devisee*, whereas the latter is to the prejudice of the *reversioner* or *remainder-man*: and *disseisin* differs from them both, for to *disseise*, is to put forcibly or fraudulently a person seised of the freehold out of possession.—1 *Inst.* 277 *a*; 3 *Bl. Com.* 167. See OUSTER.

(2) Abatement *or removal of Nuisances.*—A remedy allowed by law to the party injured by a nuisance to abate, destroy, remove, or put an end to the same by his own act. Nuisances are either public or private. Public nuisances may be abated, that is, taken away or removed, by urban sanitary authorities and other public bodies under various public acts (see e.g., Public Health Act, 1875, s. 98), and also by private individuals, where the abatement does not involve a breach of the peace. Private nuisances may also be abated by the individuals aggrieved. The law allows this, because injuries of this kind require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice.

(3) *Plea* in abatement.—A defence by which a defendant showed cause to the Court why he should not be sued, or, if sued, not in the form adopted by the plaintiff, and praying that the action might abate, i.e., cease.

A plea in abatement at *Common Law* (which by 4 Anne c. 16, s. 11, had to be substantiated by affidavit, and which was abolished by the Judicature Acts) was one which stated some fact which gave a reason for quashing or abating the action, on account of an informality, or offered an exception to the personal competency of the parties suing or sued; e.g., that the plaintiff was an alien enemy, or that the defendant was a married woman.

In *Criminal* proceedings, a plea in abatement might have been given in writing by a prisoner or defendant on account of misnomer, wrongful or no addition, annexing thereto an affidavit of its truth. But this plea is now obsolete, since, by 7 Geo. IV. c. 64, s. 19, in case of misnomer the judge may amend the indictment or information, and call upon the prisoner or defendant to plead in bar to the merits; and by 14 & 15 Vict. c. 100, s. 1, no indictment or information is to be held insufficient for want of or imperfection in the addition of any defendant.

(4) Abatement of *Debts and Legacies.*—When equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend.

So in the case of legacies, upon a deficiency of assets after payment of the debts they abate proportionably, unless a priority is specially given to any particular legacy. A testator is always presumed to intend that the legacies shall be equally paid, unless he express in his will a contrary intention.

When there are specific and pecuniary legacies, and the assets are not sufficient to pay both, the specific have the preference, and only abate proportionately amongst themselves, unless one of them is payable out of a particular fund, and others out of other funds, for then each must bear the loss arising from any deficiency of the particular fund.

(5) Abatement of *Litigation.*—By R.S.C. 1883, Ord. L., it is provided that an action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite* (r. 1). Further rules of the same order provide for making the husband, or other successor in interest, party to the action by order of the Court.

(6) Abatement or *rebate in commerce*, an allowance or discount made for prompt payment.—*Lex Merc.* It is sometimes used to express the deduction that is occasionally made at the Custom-House from the Duties chargeable upon such goods as are damaged, and for a loss in warehouses.

(7) A *badge* in coat-armour, indicating dishonour of some kind. It is called also *rebatement*.

Abator, or **Abater**, one who abates a nuisance or enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee. —*Cowel.* Also an agent or cause by which an abatement is procured.

Abatuda, or **Abatude**, anything diminished. *Moneta abatuda* is money clipped or diminished in value.—*Du Fresne's Glos.* Used in old records.

Abavia, a great-grandmother's mother.

Abavus [fr. *avusavus*, *avavus*, Lat.], a great-grandfather's father.

Abbacy [fr. *abbatia*, or *abbathia*, Lat.], the government of a religious house and the revenues thereof, subject to an abbot, as a bishopric is to a bishop.—*Cowel.* The rights and privileges of an abbot.

Abbandunum, Abbedoma, Abbendonia, Abingdon in Berkshire, which took its present name soon after Cissa, King of the West

Saxons, had founded the abbey there; also, as some say, called Sewsham and Cloveshoe.

Abbas [fr. *æstuarium*, Lat.], Humber in Yorkshire.

Abbatis, an avener or steward of the stables, an ostler.—*Spelm.*

Abbe, the old Norman-French word for Abbot.—Vide *Bro. Abr.* '*Abbe.*'

Abbey, or **Abby** [fr. *abbatia*, Lat.], a place or house for religious retirement, governed by an abbess where nuns are, and by an abbot where monks reside. Formerly in England great privileges were granted to them, such as being exempted from the bishop's visitation, and as a sanctuary for persons escaping from the penalties of an infringed law, even although they were murderers. No less than 190 abbeys were dissolved by Henry VIII., the yearly revenue of which amounted to 2,853,000*l.* per annum (an almost incredible sum, considering the value of money in those days), a great part of which went to Rome, the governors and governesses of several of the richest among them being foreigners resident in Italy. See 27 Hen. VIII. c. 28, and other acts for the suppression of religious houses collected in the Supplement to the Revised Statutes, vol. 15.

Abbot, or **Abbat** [fr. *abbas*, Lat.; *abbé*, Fr.; *abbud*, Sax.: others derive it from *abba*, Syr., father], a spiritual lord or governor, who had the rule of a religious house. An abbot, with the monks of the same house, were called the *convent*, and made a corporation.—*Termes de la Ley.*

Abbreviate of Adjudication, an abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudication.—*Scotch Law;* see *Bell's Dictionary.*

Abbreviatio Placitorum, is an abstract of ancient pleadings prior to the year-books. See *Stephen on Pleading*, 7th ed., 104.

Abbreviation, an abridging or contraction, very frequent in old statutes, as of 'rationabilem' by 'rônabilem' (in the Statute de Prærogativâ Regis) and of 'every' by 'eʊy' in 22 Hen. VIII. c. 5, s. 4, and writings. The 4 Geo. II. c. 26, which provides that all law proceedings should be in the English language, written legibly, prescribed also that they should be in words at length, and not abbreviated; but the 6 Geo. II. c. 14, permits numbers to be expressed in figures, and such abbreviations as are commonly used. In 9 Co. 48, is this maxim, *Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis.* (In abbreviations, such number and sense is to be taken, that the grant be not made void.)

Abbreviators, officers who assisted in drawing up the Pope's briefs, and reducing petitions into proper form, for their conversion into Papal Bulls.

Abbreviature, a short draft.

Abbroach, to monopolise goods or forestall a market.

Abbroachment, or **Abroachment** [fr. *ab*, Lat., and *broche*, Fr., a spit], the forestalling of a market or fair.—*M.S. Antiq.* See FORESTALLING.

Abbuttals, or **Abuttals** [fr. *abutter*, or *aboutir*, Fr., to limit or bound; or perhaps fr. to *butt* or strike.—*Wedgw.*], the buttings and boundings of land, east, west, north, and south, with respect to the places by which they are limited and bounded. The *sides* of the land are properly said to be *adjoining* to, and the *ends abutting* on, the land contiguous. —*Termes de la Ley.* See BOUNDARIES.

Abdicant, giving up, renouncing.

Abdicate [fr. *abdico*, Lat.], to renounce or refuse anything—*Termes de la Ley*—to disinherit in the civil law.

Abdication, where a magistrate or person in office voluntarily renounces or gives it up. It differs from resignation, in that *resignation* is made by one who has received his office from another and restores it into his hands; as an inferior into the hands of a superior. On King James II.'s leaving this kingdom, and *abdicating* the crown, the Lords would have had the word '*desertion*' made use of, but the Commons thought it was not comprehensive enough, for that the king might then have liberty of returning. This was fully canvassed in the then *Parliamentary Debates.* Involuntary resignations are also termed abdications, as Napoleon's abdication at Fontainebleau.

Abditorium [fr. *abditus*, Lat.], an abditory or hiding-place to conceal and preserve goods, plate, or money, or a chest in which reliques are kept, as mentioned in the inventory of the Church of York.—*Dugdale's Monasticon Anglicanum*, p. 173.

Abduction, the forcible or fraudulent taking away of women or children. This criminal offence is of three kinds—viz. (1) Kidnapping; (2) carrying away females under 16; (3) stealing heiresses; and (4) carrying away females under 18, with intent that they should be carnally known by a man. See 24 & 25 Vict. c. 100, ss. 53, 54, 55, and the Criminal Law Amendment Act, 1885, s. 7.

Abearance, carriage or behaviour. A recognisance to be of good *abearance* means

to be of good behaviour.—4 *Bl. Com.* 251, 256.

Aberemurder [fr. *abere*, apparent, notorious, and *mord*, murder, Sax.], plain or downright murder, as distinguished from the less heinous crime of manslaughter or chance medley. It was declared a capital offence, without fine or commutation, by the laws of Canute, c. 93, and of Henry I. c. 13.—*Spelm.*

Aberfraw [*aber-fraw*, Welsh, efflux of the Fraw]. The princely seat of Venedotia (North Wales) was situated where the brook Fraw flows into the sea. Here was elected the Supreme Court of Law for the administration of justice in that part of the principality.—*Ancient Laws and Institutes of Wales.*

Abessed [fr. *abassier*, Fr.], humbled, depressed, abased.—*Blount.*

Abet [from *a* (*ad* vel *usque*), and *bedan*, or *beteren*, to stir up or excite, Sax.], to maintain or patronise; to encourage or set on. The act is called *abetment.*

Abettor, or **Abettator**, an instigator or setter on, one who promotes or procures a crime to be committed.—*Old. Nat. Br.* 21. Treason is the only crime in which every one concerned is a principal. See ACCESSORY.

Abettors in indictable misdemeanours are punishable as principal offenders by 24 & 25 Vict. c. 94, s. 8, and abettors in offences so punishable on summary conviction by the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 5, and, as to particular offences so punishable, under the Larceny Act, 24 & 25 Vict. c. 96, s. 99; and the Malicious Injuries to Property Act, 24 & 25 Vict. c. 97, s. 63.

Abeyance, or **Abbayance** [fr. *abayer*, Fr., to expect to look at anything with open mouth], in expectation, remembrance, and contemplation of law.—*Cowel.* The word *abeyance* has been compared to what the civilians call *hereditas jacens*; for, as the civilians say lands and goods *jacent*, so the common lawyers say that things in a similar condition are in abeyance, as the logicians term it *in posse* or in understanding. Thus in the case of a parson, who has an estate for life only, the fee simple of his glebe is in abeyance; and when the parsonage is void, the freehold, until a successor be appointed, is in abeyance.

Abigeat, the crime of stealing cattle by droves or herds. It was severely punished, the delinquent being often condemned to the mines, banishment, or death. Also a miscarriage produced by art.—*Ash.*

Abigeus [fr. *abigo*, Lat.], a stealer of cattle, the same as abactor.—*Cowel; Civil Law.*

Ab initio [Lat.] (*from the beginning*). A person who abuses an authority given him by law becomes a trespasser *ab initio*, i.e., is liable as a trespasser from the beginning. See the *Six Carpenters' Case*, 8 *Rep.* 146; 1 *Smith's L.C.* A party making an irregular distress for rent is not deemed a trespasser *ab initio*, by virtue of 11 Geo. II. c. 19, s. 19.

Ab intestato, *from a person who died without having made a will.* See INTESTATE.

Ab irato [Lat.] (*by a man in anger*).—*Civil Law.*

Abishering, or **Abishersing**, quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee.—*Rastell's Abr.; Termes de la Ley*, 7.

Abjuration [fr. *abjuro*, Lat.], a forswearing or renouncing by oath. In the old law it signified a sworn banishment, or an oath taken by a person who had claimed sanctuary, to forsake the realm for ever, now abolished by 12 Jac. I. c. 28. *The oath of abjuration* (introduced by 13 Wm. III. c. 16, and altered by 6 Geo. III. c. 53) was to be taken by every person entering upon any public office or trust. By this he renounced the Pretender, and recognised the right of Her Majesty, under the Act of Settlement, engaging to support her, and promising to disclose all treasons and traitorous conspiracies against her.—*Staundford's Pl. C.* b. 2, c. 40. By the 21 & 22 Vict. c. 48, one form of oath was substituted for the oaths of allegiance, supremacy, and abjuration. For this form another was substituted by the Act 30 & 31 Vict. c. 75, s. 5. This has in its turn been superseded by the Promissory Oaths Act, 31 & 32 Vict. c. 72, by which a new form of the oath of allegiance is provided. The numerous obsolete acts in relation to oaths are repealed by the Promissory Oaths Act, 1871, 34 & 35 Vict. c. 48. See QUAKERS and ROMAN CATHOLICS.

Abjure, to retract, to recant, or abnegate a position upon oath.

Abladium, cut corn.—*Old Records.*

Ablato-Bulgio, Bulness, or Bolness, in Cumberland.

Ablegate [fr. *ablego*, Lat.], to send abroad a person on some public business or embassy.

Ablegati, Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio.

Ablocation, a letting out to hire for money.

Abnepos, the grandson of a grandson or granddaughter.

Abneptis, the granddaughter of a grandson or granddaughter.

Abo, a carcase of an animal killed by a wolf or other beast of prey.—*Ancient Laws and Inst. of Wales.*

Abode, habitation or place of residence; stay or continuance. In law it is used in different senses, to denote the place of a man's residence or business, temporary or permanent. For some purposes, in law a man may be deemed to have an 'abode' where he has a place of business, *even* although he *reside* elsewhere, or where he has a *temporary* residence, although his permanent residence is elsewhere or even abroad. But 'abode' or residence is quite distinct from *domicil*, which means much more than even a place of permanent residence (see that word, *post*); whereas, it would seem that 'abode' does not even necessarily imply *that*. 'Abode' seems larger and looser in its import than the word 'residence,' which in strictness means the place where a man lives, i.e., where he sleeps or is at home.

Abolition [fr. *abolir*, Fr.; fr. *abolco*, Lat.], a destroying; also the leave given by the sovereign or judges to a criminal accuser to desist from further prosecution.—25 *Hen. VIII.* c. 21.

Abone [*Abonis*, Lat.], Avington or Aventon, in Gloucestershire.

Aborigines [fr. *ab*, from, and *origo*, Lat.], the original or first inhabitants of any country.

Abortion [fr. *ab*, which in composition signifies defect, according to Martinius, and *orior*, Lat., to arise], a miscarriage, or the premature expulsion of the contents of the womb, before the term of gestation is completed.

Our law does not recognise the distinction adopted by some medical commentators on the subject, who consider miscarriages during the first six months as abortions, and those during the last three as premature labours; but applies the term abortion to the throwing off of the fœtus at any period of the pregnancy.—*Beck. Med. Jur.* 238.

By 24 & 25 Vict. c. 100, s. 58, the administration of drugs or unlawful use of instruments, by a pregnant woman to herself, or by any person to her, with intent to procure miscarriage, is made felony, punishable by penal servitude or imprisonment, in the discretion of the Court.

It is no excuse that the woman consented to, or even solicited, the perpetration of the offence; for this would be to set the law at nought, inasmuch as the crime is seldom attempted but with the woman's approval.

Above-cited, or **Mentioned,** quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where whatever is mentioned or cited before in the same roll must be *above.*—*Encyc. Lond.*

Abrevicum, Berwick-upon-Tweed.

Abridge [fr. *abreger*, Fr., *abbreviare*, Lat.], to make shorter in words retaining the substance. Also the making a declaration or count shorter by subtracting or severing some of the substance therefrom, i.e., a man was said to abridge his plaint in assize, and a woman her demand in action of dower, where any land was put into the plaint or demand which was not in the tenure of the defendant; for if the defendant pleaded non-tenure, joint-tenancy, or the like, in abatement of the writ as to part of the lands, the plaintiff might leave out those lands, and pray that the tenant might answer to the rest.—*Brooke*, tit. *Abridgment.* Now obsolete in consequence of the abolition of real and mixed actions, by 3 & 4 Wm. IV. c. 27, s. 36, and 23 & 24 Vict. c. 126, s. 26.

Abridgment [fr. *abreviamentum*, Lat.], a large work contracted into a narrow compass; a summary, epitome, or compendium. As to how far this may be done without breach of copyright, see *Butterworth* v. *Robinson*, 5 *Ves.* 709.

Abridgments, or **Digests of the Law,** of ancient authority. The principal of these are *Brooke's*, *Fitzherbert's*, *Rolle's*, and *Comyn's Digest.* Besides these there are *Viner's* and *Bacon's Abridgments*, and *Harrison's*, *Chitty's*, and *Fisher's Digests*, of later date.

Abrogate, to annul; to abrogate a law is to repeal it.—*Cowel.* The maxim is *Leges posteriores, priores, contrarias abrogant.* 11 *Co.* 626. (Subsequent laws repeal prior contrary laws.)

Abrogation, the annulment of a law by constitutional authority. It stands opposed to *rogation*; and is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law.—*Encyc. Lond.*

Abscond, to go out of the jurisdiction of the Courts, or to lie concealed in order to avoid any of their processes.

Absconding Debtor. By 32 & 33 Vict. c. 62, replacing the repealed 14 & 15 Vict. c. 52, s. 6, there is a power of arresting absconding debtors; and see MESNE PROCESS.

Absence of Husband or Wife for Seven Years is, under certain circumstances, a defence in an indictment for bigamy. See BIGAMY.

Absentee, a person who is away from his usual place of residence; a non-resident landlord.

Absentees, or **des absentees**. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII. It is mentioned in letters-patent 29 Hen. VIII.

Absentia ejus qui reipublicæ causâ abest, neque ei, neque alii damnosa esse debet.—(The absence of any person who is abroad in the service of the state ought to be detrimental neither to him nor to another.)

Absionare, to shun or avoid, used by the English-Saxons in the oath of fealty.—*Somner.*

Absoluta sententia expositore nonin diget, 2 *Inst.* 533.—(A positive decree is not in need of any interpreter.)

Absolute, complete, unconditional. A rule or order absolute is a completed judgment of a Court, and is so called in contradistinction to a rule or order nisi which is made on the application of one party only (*ex parte*), to be made absolute unless the other party succeed in showing cause why it should not be made absolute (*discharged*).

Absolute Warrandice, a warranting or assuring of property against all mankind.—*Scotch Conveyancing Phrase.* It is, in effect, a covenant of title.

Absolution, a dispensation; a remission of sins; an acquittal by sentence of law.—*Ayliffe.*

Absolve, to acquit of a crime, to pardon or set free from excommunication. See ASSOILE.

Absolvi animam meam. I have done my duty; I have relieved my mind.

Absolvitor (*Scotch Law*), an acquittal; a decree in favour of the defender in any action.

Absque hoc [Lat.] (*without this*), technical words of exception which were made use of in a *special* traverse; as, the defendant pleads that such a thing was done at B., etc., *without this* (*absque hoc*), that it was done at, etc.—1 *Saund.* 22: abolished, C. L. P. Act, 1852, s. 65.

Absque impetitione vasti [Lat.] (*without impeachment of waste*), a reservation frequently made to a tenant for life, that no man shall proceed against him for waste committed. This reservation does not extend to allow manifest injury to the inheritance. See WASTE.

Absque tali causa [Lat.] (*without such cause*): formal words in the now obsolete replication *de injuriâ.*—*Stephen on Pl.* 191.

Abstention, keeping an heir from possession; also, tacit renunciation of a succession by an heir.—*French Law.*

Abstract (in the abstract), a thing looked at purely by itself and without comparison with any other thing or with any reference to surrounding circumstances.

Abstract [fr. *abstrahere, abstractus*; fr. *trahere*, Lat., to draw], an abridgment or epitome, as the abstract of pleas required in some cases before the Judicature Act; also a purloining.

Abstract of Title, an epitome of the evidences of ownership.

Such an abstract should show the soundness of a person's right to a given estate, together with any charges or circumstances in any wise affecting it. A perfect abstract discloses that the owner has both the legal and equitable estates at his own disposal perfectly unincumbered.

Upon a sale or mortgage, the solicitor of the owner usually prepares the abstract at his client's expense (except on sales to a company under the Land Clauses Act, 1845, when it must be borne by the company, unless it be stipulated otherwise, 8 Vict. c. 18, s. 22), and delivers it to the solicitor of the proposed purchaser or mortgagee, who compares it with the original title-deeds, and makes requisitions (when necessary), in order to ascertain any important but undisclosed facts, to remedy any defects, or to dissipate any doubts or ambiguities. He then should lay all the papers before counsel, for his opinion as to the safety of the title.

Should the abstract be long and voluminous, a list of the dates and nature of the deeds and muniments, chronologically arranged, with references to the pages of the abstract in which they are to be found, facilitates perusal.

The object of every abstract is to enable the purchaser or mortgagee, or his counsel, to judge of the evidence deducing, and of the incumbrances affecting, the title.

Every title involves the question of legal and equitable ownership; for as it is in vain that there is a good title at Law, if that title be bad or defective in Equity, so it is not sufficient that there is a good title to the legal estate or to the equitable estate, if it be incumbered with judgments, legacies, debts to the crown, or other charges, because in proportion to the extent of such incumbrances there must be a reduction in the actual value of the vendor's interest.

Every abstract should describe whatever will tend to enable a purchaser or mortgagee, or his counsel, to form an opinion of the precise state of the title at Law and in

Equity, together with all chances of eviction or even of adverse claims.

A simple abstract relating to one estate only should set forth chronologically a clear statement of the material parts of the deeds, wills, writings, records, and private acts of parliament, which at all affect or concern the title to be deduced, together with such matters *in pais*, as births, majorities, marriages, deaths, survivorships, pedigrees, descents, and successions, as connect the several transactions, or in any wise vary the title; and these facts should be authenticated by such legal evidence as would be deemed satisfactory and conclusive in an action to try the title. Judgments, crown-debts, charges, and incumbrances should be fairly stated.

But a complex or compound abstract is not susceptible of a chronological arrangement; as when the title relates to different parcels of land or different interests, or the property belongs to joint tenants, tenants in common, or coparceners, who have entered into partition, and there is a different title to their shares; it would then be better to arrange the documents relating to one portion under a distinct heading, so as to keep the title to each part in a connected series, and, sometimes, separate abstracts for the different titles would simplify the business and avoid an embarrassing confusion, especially if the several properties be distinct, or the title is compounded of both freehold and copyhold estates. Should the distinct titles to the several parts of the property afterwards become united, then there should be a deduction of the title to each part separately up to the point of junction.

As soon as practicable, after the abstract of title is delivered to the vendee's solicitor, he should himself diligently compare it with the original documents, since he is answerable for the consequences of any negligence. For this purpose they are usually produced at the chambers of the vendor's solicitor, or at the vendor's residence. If they are in town, the solicitor's agent should be instructed to undertake the comparison; but if they are in a distant part of the country, then the journey of the vendee's solicitor occasioned thereby will be at the vendor's expense if there be no stipulation to the contrary.

The points to which the attention of the solicitor should be most particularly directed in comparing the muniments with the abstract, are the stamps upon the deeds; the dates of the different assurances (he should not depend upon the indorsement for this purpose); the names and additions of the parties, and the characters in which they respectively act, as whether trustee, executor, or heir-at-law; that no important recitals are omitted, and that those that are abstracted are faithfully given. The receipt clause should be attended to, to see that there is no unusual or special matter contained in it relative to the purchase money, which may affect the purchaser. The amount of the consideration, the names of the grantors and grantees, and particularly the identity of the parcels, and that there are no exceptions therein. The words of the different limitations of uses and trusts must be cautiously made to agree, and any deficiency therein must be supplied by the necessary alteration in the abstract; the covenants for quiet enjoyments and freedom from incumbrances should be scrutinised, for if there be any collateral right of enjoyment or lurking incumbrance, it will most probably make its appearance there, so all burdensome covenants in leases must be looked into. The interest which tenants in possession have in the lands must also be inquired after, for the purchaser will be bound thereby; but in nothing is caution more necessary than in attending to the execution and attestation of the different deeds, to see that they are executed by all the parties, or that the abstract notices those who have not done so; and when the execution and attestation are under a power which directs a particular mode of execution, there is still greater necessity to be satisfied that the precise terms of the power have been complied with; and in the case of wills, that the law requiring two witnesses has been observed, and that the attestation expresses that the testator signed in their presence. In deeds bearing to be for a consideration in money, care should be taken to see that the receipt for the consideration money is indorsed on the deed and witnessed. It is generally witnessed by the same party who attests the execution of the deed. And, lastly, where the deed has been enrolled or registered, or livery of seisin has been requisite, the indorsement of these different acts upon the deed should be noticed.

Whenever the deeds are in the possession of third parties, they should be informed of the negotiation to purchase the estate to which they relate, and an inquiry should be made of them respecting their particular interests therein. Such an inquiry should also be made of tenants or persons in possession, when the leases under which they hold cannot be inspected. If the property be vested in trustees, inquiries should be made of them as to any incumbrances, and they should have notice of the intended purchase, in order to exclude a subsequent purchaser, or

incumbrancer, since priority of notice gives priority of equity.

Of course those persons to whom these questions are put will be bound by their answers; but an incumbrancer need not satisfy any inquiry relative to his security in the absence of an offer to satisfy his claim. See TITLE; the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78); and *Dart V. & P.*, 6th ed., chap. VIII.

Absurdum est affirmare (rejudicata) credendum esse non judici. 12 *Co.* 25.—(It is absurd to say, after judgment, that any one else than the judge should be hearkened to.)

Abundans cautela non nocet. 11 *Co.* 6.—(Extreme care does no mischief.)

Abuse of process. There is said to be an abuse of process, when an adversary through the malicious and unfounded use of some regular legal proceeding obtains some advantage over his opponent. See *Lush's Pr.*, 3rd ed., 193. Actions manifestly frivolous or brought against good faith have also not unfrequently been stayed in chambers as an abuse of the process of the Court. See, e.g., *Edmunds* v. *Attorney-General*, 47 *L. J. Ch.* 345.

Abusing children, having carnal intercourse with young girls. If the girl be under the age of thirteen (*formerly* 10 and *afterwards* 12) years, the offence is a felony, punishable with penal servitude for life, or not less than five years, or imprisonment (with or without hard labour) for not more than two years; if the girl be above the age of thirteen (*formerly* 10 and *afterwards* 12) and under sixteen (*formerly* 12 and *afterwards* 13), the offence is a misdemeanour, punishable by imprisonment, with or without hard labour, to the extent of two years.—Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69, repealing the Offences against the Person Act, 1875, 38 & 39 Vict. c. 94, repealing 24 & 25 Vict. c. 100, ss. 50, 51, which fixed lesser ages as above. An attempt to have carnal intercourse with a girl under thirteen years is an offence punishable by a like imprisonment, by the act of 1885. Consent of the girl is no defence, and the act of 1885, by raising from 13 to 16 the age at which unresisted sexual intercourse is a crime, has made a very material amendment in the law.

Abut [fr. *aboutir*, Fr., to touch at the end], to border upon or approach.—*Encyc. Lond.*

Abuttals. See ABBUTTALS.

Accapitum, money paid by a vassal upon his admission to a feud; the relief due to the chief lord.—*Encyc. Lond.*

Accedas ad curiam [Lat.] (*that you go to the Court*), an original writ to the sheriff, issued out of Chancery, where a man has received false judgment in a Hundred Court or Court Baron, or justice has been delayed. If a plaint in replevin be therein levied, it was removed by this writ, which was in every respect the same as the *recordari facias loquelam*, excepting that it directed the sheriff to go to the Lord's Court, and there cause the plaint to be recorded, and so to return it to the Court above, being one of the Superior Courts of Common Law at Westminster.—*F. N. B.* 18; *Termes de la Ley.*

Accedas ad vicecomitem [Lat.] (*that you go to the sheriff*). Where the sheriff has a writ called *pone* delivered to him, but suppresses it, this writ is sent to the coroner, commanding him to deliver a writ to the sheriff.—*Reg. Orig.* 83.

Acceleration, the shortening of the time for the vesting in possession of an expectant interest.

Acceptance, the taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made.—*Bro. Abr.*

The acceptance of a Bill of Exchange is defined by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 17, as 'the signification by the drawee of his assent to the order of the drawer.' It must be written on the bill, and signed by the drawee, whose mere signature is sufficient to charge him; and it must not express that the drawee will perform his promise by any other means than the payment of money.—*Ib.*

Acceptilatio, the verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not, or the acceptance of something merely imaginary in satisfaction of a verbal contract.—*Scotch Law; Smith's Dict. of Antiq.; Sand. Just.*, 7th ed., 393. See STIPULATION.

Acceptor, or **Accepter,** a person who accepts a bill of exchange drawn upon him; he is called a *drawee* before acceptance; he is the first and principal party liable to pay the amount of the bill. See ACCEPTANCE.

Access, approach, or the means of approaching. The presumption of a child's legitimacy is rebutted, if it be shown that the husband had not access to his wife within such a period of time before the birth, as admits of his having been the father. 'If a husband have access, although others, at the same time, are carrying on a criminal intimacy with his wife, a child born under such circumstances is still legitimate.' Per Alderson, J., in *Cope* v. *Cope*, 5 *C. & P.* 604. Neither husband nor wife is admissible as a witness to prove non-access. 'This' (says

Lord Mansfield, in *Goodright* v. *Moss*, 2 *Cowp.* 594) 'is a rule founded on decency, morality, and policy.' And see *Bosvile* v. *Attorney-General*, 12 *P. D.* 117.

Accessary, or **Accessory** [*particeps criminis quasi accedens ad culpam*, Lat., as though assenting to the offence], he who is not a chief actor at a felony, nor present at its perpetration, but yet is in some way concerned therein, either before or after the fact committed. An accessory *before* the fact is one, who being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessory, for if he be present, he becomes a principal. An accessory *after* the fact may be, where a person knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. To make an accessory *ex post facto*, it is in the first place requisite that he knows that the felony has been committed; in the next place he must receive, relieve, comfort, or assist the felon, and generally, any assistance whatever given to hinder the apprehension, trial, or punishment of the felon, makes the assister an accessory. In treason and misdemeanours there are no accessories, either before or after the offence, every person implicated being a principal (see 24 & 25 Vict. c. 94, s. 8). In manslaugher there cannot be an accessory *before* the fact, for it is by judgment of Law an unpremeditated offence. As to the trial and punishment of accessories:—By 24 & 25 Vict. c. 94 (the Accessories and Abettors Act), an accessory before the fact to any felony may be indicted, tried, convicted, and punished in all respects as if he were a principal felon, and an accessory after the fact is in general punishable with imprisonment for any term not exceeding two years (with or without hard labour), and may also be required to find security to keep the peace, or in default to suffer an additional imprisonment to the extent of one year; but an accessory after the fact to murder is punishable by penal servitude for life, or not less than three (now *five*, 27 & 28 Vict. c. 47, s. 2) years, or by imprisonment (with or without hard labour) to the extent of two years. (24 & 25 Vict. c. 100, s. 67.) See also *Russell on Crimes; Roscoe's Criminal Evidence;* and *Archbold's Crim. Pleading.*

Accession [fr. *accedo*, Lat.], addition; arriving at, the commencement of a sovereign's reign. Also the absolute or conditional acceptance by a nation of a treaty already concluded between other countries.

Accession, *property by.* The doctrine of property arising from *accession* is grounded on the right of occupancy, and derived from the Roman law; thus, if any given corporeal substance receive an accession, either by natural or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into utensils, the original owner of the thing was entitled by his right of possession to the property of it under its improved state; but if the thing itself, by such operation, was changed into a different species, as by making wine, oil, or bread out of another's grapes, olives, or wheat, it belonged to the new operator, who only made a satisfaction to the former proprietor for the materials so converted. The brood of tame and domestic animals belongs to the owner of the dame or mother, the English law agreeing with the civil, that *partus sequitur ventrem* (the offspring follows the mother); and in accordance with the Roman law principle, *si equam meam equus tuus prægnantem fecerit non est tuum sed meum quod natum est* (if your horse gets my mare with foal, the foal is not your property, but mine). *Bracton, l.* 2, c. 2, s. 3; *Puff, De. Jur. Nat. et G. l.* 4, c. 7. The rule of the Roman law was expressed thus: *Accessio cedit principali.* Commentators have used the word *accessio* not only for the increase itself, but also for the mode in which the increase becomes one's property.—*Sand. Justin.*, 7th. ed., 98; *Dig.* 34, *l.* 2, c. 19, s. 13.

Accessorium non ducit, sed sequitur suum principale. Co. Litt. 152.—(That which is the accessory or incident does not lead but follows its principal.)

Accessorius sequitur naturam sui principalis. 3 *Inst.* 139.—(An accessory follows the nature of his [or its] principal.)

Accessory.—See ACCESSARY.

Accessory to Adultery, a phrase used in the law of divorce, and derived from the criminal law. It implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference, an accessory directly commands, advises, or procures the adultery. A husband or wife who has been accessory to the adultery of the other party to the marriage cannot obtain a divorce on the ground of such adultery.—20 & 21 *Vict.* c. 85, ss. 29, 31. See *Browne on Divorce.*

Accident, an extraordinary incident; something not expected. It is also a head of equitable jurisdiction, which was concurrent with that of the Courts of Law.

The meaning to be attached to the word 'accident,' in relation to equitable relief, is any unforeseen and undesigned event, productive of disadvantage.

Where title-deeds are lost, the defect occasioned by such an accident will be supplied; thus a mortgage-deed being stolen, the mortgagor or purchaser of the property will be compelled to pay the loan or consideration-money upon the mortgagee's reconveyance and indemnity against such loss. If after a contract for sale of an estate, and before the title is accepted, the title-deeds are destroyed by fire, Equity will compel specific performance of the contract, if the vendor can furnish the purchaser with means of showing the contents of the destroyed deeds, and of proving that such deeds were duly executed and delivered.

A purchaser, being deemed the equitable owner of the purchased estate from the signing the contract for sale, will be compelled to complete the purchase, although the property be destroyed during the negotiation, but a bidder at a sale under the authority of the High Court of Justice, not being deemed the purchaser until the certificate that he is the highest bidder has been confirmed, is not liable for loss by fire or otherwise which may happen to the property in the meantime; he would, however, have to pay the purchase-money if the estate were merely a life interest, and the *cestui que vie* should die immediately after the acceptance of his bid.

It is upon the principle of relieving against the prejudicial consequences of accident by loss of deeds, that grants are often presumed; thus evidence of the adverse enjoyment of an easement for twenty years may raise the presumption that there has been a grant (*Rosc. Ev.* 16th ed., p. 39); and the enclosure of a common for thirty years raises the presumption that the enclosure was properly made.

Although it is a delicate function to restrain the exercise of a legal right, yet Equity relieves against penalties and forfeitures on the ground of accident, provided an adequate compensation can be given, or the thing can be done afterwards without damaging the interests of other parties. Thus, in the case of a bond for the payment of money a a given time under a penalty, if the money is not paid, Equity will relieve against the penalty on the ground that it would be unjust for the obligee to avail himself of the penalty when an offer of full indemnity, by the payment of the sum due with interest, is offered. When an estate is sold by auction, and there is a condition that the deposit shall be forfeited on the non-completion of the contract by a certain day, Equity invariably relieves against the lapse of time. Again, in the administration of assets, if an executor or administrator pay the legacies and certain debts, upon the reliance of the sufficiency of the assets, and it afterwards turns out that from subsequently discovered liabilities or unforeseen occurrences the assets become insufficient, Equity will relieve, provided the executor or administrator have acted faithfully and cautiously, and this on the ground that otherwise he would be innocently subjected to an unjust loss arising from pure accident. If the master of an apprentice die before the term has expired, a return of part of the *premium* will be ordered, on account of the failure of the contract from accident.

'Upon a general survey of the grounds of equitable jurisdiction in cases of accident,' observes Story (*Eq. Jur.* c. 4. ad. fin.), 'it will be found that they resolve themselves into the following results:—that the party seeking relief has a clear right, which cannot otherwise be enforced in a suitable manner; or that he will be subjected to an unjustifiable loss, without any blame or misconduct on his own part; or that he has a superior equity to the party from whom he seeks the relief.'

Accident (in logic), something in any subject, person, or thing not belonging to the *essence*. See ESSENCE.

Accident occasioned by negligence. See NEGLIGENCE.

Accidental Death. By the act known as 'Lord Campbell's Act' (9 & 10 Vict. c. 93), upon the death of any person through the wrongful act, neglect, or default of another, an action may be maintained for the benefit of the wife, husband, parent, and child of the deceased. In case there is no executor or of his unwillingness to sue, the action may be brought by the persons beneficially interested (27 & 28 Vict. c. 95).

Accidental Fire. By 14 Geo. III. c. 78, s. 86, no action shall be prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall *accidentally* begin; but nothing therein contained shall defeat any contract or agreement made between landlord and tenant. The statute will not protect tenants from the consequences of fires caused by their negligence.—*Woodf. Land and Ten.*, ch. xvii.

Accipitare, to pay relief to lords of manors. *Capitali domino accipitare*, i.e., to pay a relief, homage, or obedience to the chief lord on becoming his vassal. *Fleta, l.* 2, c. 50.

Accite, to summon.—*Obs.*

Accola, a husbandman who comes from some other country to till the land, and is thus distinguished from *incola*, viz., accola *non propriam, propriam, colit* incola *terram* (Accola is one who does not till his own land, Incola one who does).—*Du Fresne.*

Accolade [fr. *accoler*, Fr., *collum amplecti*, Lat.], a ceremony anciently used in knighthood, by the king putting his hand upon the knight's neck.—*Cowel.* Greg. de Tours writes, that the kings of France, in conferring the gilt shoulder belt, kissed the knight on the left cheek. The *accollé*, or blow, John of Salisbury assures us, was in use among the Normans; by this William the Conqueror conferred the honour of knighthood upon his son Henry. It was first given with the naked fist, but afterwards with the flat of a sword.

Accomenda, a contract whereby a person entrusts property to the master of a vessel, to be sold for their joint profit.—*Italy, Mar. Law.*

Accommodation, a friendly agreement; an amicable composition between persons at variance. *An accommodation Bill of Exchange* is one to which the accommodating party, be he acceptor, drawer, or indorser, has put his name, without consideration, for the purpose of benefiting or accommodating some other party who desires to raise money on it, and is to provide for the bill when due. The person accommodated engages either himself to take up the bill when due, or to provide the accommodating party with the funds for that purpose, or to indemnify him against the consequences of non-payment. See *Byles* and *Chitty on Bills.*

Accommodation Lands, land bought by a builder or speculator who erects houses thereon, and then leases portions thereof, upon an improved ground-rent.—*Builder's Term.*

Accommodation Works, works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway, e.g., gates, bridges, culverts, fences, etc.—8 *Vict.* c. 20. s. 68.

Accomplice [fr. *complice*, Fr., *complex*, Lat., bound up with one in a project, but always in a bad sense], one concerned with another or others in the commission of a crime.—*Hawk. P.C.* 87.

Accord.—Accord and Satisfaction [fr. *accorder*, Fr., to agree], an agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action. When the agreement is executed, and satisfaction has been made, it is called *accord and satisfaction.* Accord and satisfaction bars the right of action; accord without satisfaction does not. In the case of an ascertained debt, the acceptance of a smaller sum is no satisfaction, e.g. payment of 50*l.* is no answer to an action for a debt of 100*l.*; though if anything other than money, e.g. a negotiable instrument for a smaller amount or a pepper-corn had been accepted in satisfaction, the action would have been barred. *Cumber* v. *Wane*, 1 *Smith's L. C.*; *Foakes* v. *Beer*, 9 App. Cas. 605.

Account or **Accompt** [fr. *compte*, Fr., *computo*, Lat.], a registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money, which have taken place between two or more persons. Accounts are either —(1) open, where the balance is not struck, or it is not accepted by all the parties; (2) stated, where it has been expressly or impliedly acknowledged to be correct by all the parties; and (3) settled, where it has been accepted and discharged.

As to the ancient action of Account at common law, see 3 *Steph. Com.*, 9th ed., 451, and *Bac. Ab. Account.*

Prior to the Judicature Act, 1873, Equity entertained suits for accounts when they were mutual, i.e., where there existed a series of expenditures on one side, and of payments on the other, and not merely one payment and one receipt, and also where the account was on one side only, but was of so complicated and intricate a nature that it could not be satisfactorily disposed of at Law, and a discovery was wanted which was material to the right of relief. But for a mere matter of set-off at Law, a suit in Equity would not be the remedy.

The usual cases of accounts arising from contracts or *quasi* contracts, which are investigated in Equity, are the following:—Agency, Apportionment, General Average and Contribution, Waste and Winding-up of Companies.

By the Judicature Act, 1873, s. 34 (3), all causes and matters for the taking of partnership or other accounts are assigned (subject to a power of transfer) to the Chancery Division of the High Court of Justice. If the plaintiff in the first instance desires to have an account taken, the writ of summons must be endorsed with a claim that such account be taken (R. S. C. 1883, Ord. III., r. 8), and in such cases the order made must include the directions which were usual in the Court of Chancery. (*Ib.*, Ord. XV., rr. 1, 2.)

The Statute of Limitations cannot be pleaded in bar to an open account, unless all accounts have ceased above six years. See The Mercantile Law Amendment Act, 1856, 19 & 20 Vict. c. 97, s. 9.

By the Jud. Act, 1873, s. 66, the Court or a judge may refer accounts to a district

registrar; or (s. 57) if any cause or matter require a prolonged examination of accounts it may be referred by the Court or a judge to an official or special referee. See ARBITRATION AND REFEREE.

Account current, a running or open account between two or more persons or firms.

Account duties. Duties payable by the Customs and Inland Revenue Act, 1881, 44 Vict. c. 12, s. 38, on a *donatio mortis causâ* (see DONATIO MORTIS CAUSÂ), or on any gift the donor of which dies within three months after making it, or on joint property voluntarily so created and taken by survivorship, or on property taken under a voluntary settlement in which the settlor had a life interest.

Account stated. This was a common count in a declaration upon a contract under which the plaintiff might prove an absolute acknowledgment, by the defendant, of a liquidated demand of a fixed amount, which implies a promise to pay on request. It might be joined with any other count for a money demand. The acknowledgment or admission must have been made to the plaintiff or his agent. It may be of one only out of several items. The account must have been stated before action brought. See STATEMENT OF CLAIM.

Accountable Receipt, a written acknowledgment of the receipt of money or goods to be accounted for by the receiver. It differs from an ordinary receipt, or acquittance, in this, that the latter imports merely that money has been paid. See *Clark* v. *Newsam*, 1 *Excheq.* 131. By 24 & 25 Vict. c. 98, s. 23, the forgery of an accountable receipt, or any endorsement on, or assignment of it, with intent to defraud, is a felony punishable by penal servitude or imprisonment.

Accountant or **Accomptant,** one whose business it is to compute, adjust, and range in due order accounts.

Accountant in Bankruptcy, an officer who had the control and management of the proceeds of bankrupts' estates. The Bankruptcy Act, 1861, s. 12, provided that upon the first vacancy the office should be abolished, and its duties discharged by the Chief Registrar. The funds in the Bank of England standing in his name were transferred (upon certain conditions) to the National Debt Commissioners, by 32 & 33 Vict. c. 91 (which see). See also BANKRUPTCY.

Accountant-General, or **Accomptant-General,** an officer of the Court of Chancery, appointed by act of parliament to receive all money lodged in court, and to place the same in the Bank of England for security. (12 Geo. I. c. 32; 1 Geo. IV. c. 35; 15 & 16 Vict. c. 87, ss. 18—22 & 39. See *Daniell's Ch. Pr.*, 6th ed., 1721 *et seq.*) The office, however, has been abolished by 35 & 36 Vict. c. 44, and the duties transferred to Her Majesty's Paymaster-General.

Accounts, Falsification of, a misdemeanour on the part of a clerk, etc., by 38 & 39 Vict. c. 24.

Accouple, to marry.

Accredit, to countenance or procure honour or credit to any person.—*Johns.* To accredit a diplomatic agent is to furnish him with such authority and credentials as are calculated to ensure his being received with the credit and rank due to his public character.

Accredulitare, to purge an offence by an oath.—*Blount.*

Accrescendi, *jus.* See JUS ACCRESCENDI.

Accretion [fr. *accresco*, or *adcresco*, Lat], the act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land out of the sea or a river. Accretion of land is of two kinds: by *alluvion*, i.e., by the washing up of sand or soil, so as to form firm ground; or by *dereliction*, as when the sea shrinks below the usual water mark. If this accretion of land be by small and imperceptible degrees, it belongs to the owner of the land immediately adjacent to it, in accordance with the maxim *De minimis non curat Lex* (the Law cares not about trifles), but if it be sudden and considerable it belongs to the Crown.—4 *Hale, De Jure Maris*, 14; 2 *Br. & Had. Com.* 415.

Accrimination, Accusation.—*Obs.*

Accroaching, attempting to exercise royal power.—4 *Br. & Had. Com.* 83.

Accroche [fr. *accrocher*, Fr.], to hook or grapple unto, to encroach. The French use it for delay, as *accrocher un procès*, to stay proceedings in a suit.—*Cowel.*

Accrue [fr. *accroitre accru*, Fr.; fr. *crescere*, Lat., to grow], to grow to, or to arise.

Accumulation, a gathering together, heaping up, or amassing. The dominion over property, and its rents, issues, and profits, is restrained by our law as regards perpetuity and accumulation. The rules against perpetuities and accumulations bound the propriety right on every side, and limit that species of vanity, which, in the language of Lord Nottingham, 'fights against God, by affecting a stability which human providence can never attain to.'—2 *Swanst.* 460. See PERPETUITY.

The prospective accumulation of income of real or personal estate is restrained by 39 & 40 Geo. III. c. 98. This statute is sometimes quoted as Lord Loughborough's Act, but it is more commonly called 'The Thellusson Act,' because the case of *Thellusson* v. *Wood-*

ford (4 *Ves.* 227—343, 1798; and 11 *Ves.* 112—151, 1805) was the occasion of its enactment. It declares that no person shall by deed, will, or otherwise howsoever, dispose of any real or personal property, in such manner that the rents, or produce thereof, shall be accumulated for any longer term than—

(1) The life of the grantor; *or*

(2) The term of twenty-one years from the death of the grantor; *or*

(3) During the minority of any person who shall be living or *en ventre sa mère* at the time of the death of the grantor; *or*

(4) During the minority of any person who under the trusts of the deed, will, or other assurance, directing such accumulations, would, for the time being, if of full age, be entitled to the rents, or annual produce so directed to be accumulated. 'In every case where any accumulation shall be directed otherwise than as aforesaid,' provides the statute, 'such direction shall be null and void: and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed' (s. 1).

The act, however, does *not* extend—

(1) To any provision for payment of debts of the grantor, or other persons; *or*

(2) To any provision for raising portions for any child of the grantor, or any child of any person taking any interest under the grant; *or*

(3) To any direction touching the produce of timber or wood upon any lands or tenements (s. 2).

(4) To any disposition respecting heritable property in Scotland.

The statute operates as a restraint upon those trusts for accumulation which aim at a duration beyond the statutory limits, simply by causing them to cease and become of no effect immediately upon the twenty-first anniversary of the death of the settlor or testator, and until that date, leaves them as valid as if the act had not passed.

Accumulative Judgment. If a person already under sentence for a crime be convicted of another offence, the Court is empowered to pass a second sentence, to commence after the expiration of the first.

Accusare nemo se debet, nisi coram Deo.—Hard. 139.—(No one is bound to accuse himself, unless in the presence of God.)

Accusation, the formal charging of any person with a crime.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit. See Sir A. Ashley's case, Moore, 817. —(An accuser ought not to be heard after the expiration of a reasonable time, unless he can account satisfactorily for the delay.)

Acemannes-ceaster, Bath.

Acephali, the levellers in the reign of Hen. I., who acknowledged no head or superior.—*Leges H.* 1; *Cowel.* Also certain ancient heretics who appeared about the beginning of the 6th century, and asserted that there was but one substance in Christ, and one nature.

Ac etiam [*and also*]. The introduction to the statement of the real cause of action in cases where it was necessary to allege a fictitious cause in order to give the Court jurisdiction.—*Bouvier.* The ac etiam clause appears to have been invented in consequence of the enactment of 13 Car. s. 1, c. 2, that the particular cause of action must be expressed in the writ where more than 40*l.* was claimed.—*Davison* v. *Frost,* 2 *East,* 305. See also LATITAT.

Achat [Fr.], a purchase or bargain.—*Cowel.*

Achators, or **Achetors,** purveyors, because they frequently bargain; also purchasers.—*Chaucer.*

Achelanda, Auchelandia, Auklandia, Auckland, in the Bishopric of Durham.

Acherset, a measure of corn, conjectured to have been the same with our quarter or eight bushels.—*Cowel.*

Achwre [*Ach-gwré,* near belt], an enclosure of wattles or thorns surrounding a building, at such a distance as to prevent cattle reaching and damaging the thatch.—*Anc. Inst. Wales.*

Acknowledgment-money, a sum paid in some parts of England by copyhold-tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. —*Cowel.*

Acknowledgment of a wife's assurance. A declaration by her that she knows what the assurance means, and that she executes it of her own free will, for making which certain formalities are prescribed by the 'Fines and Recoveries Abolition Act' (3 & 4 Wm. IV. c. 74), ss. 77—91, with regard to land, and by 20 & 21 Vict. c. 57, commonly called 'Malin's Act,' which incorporated the procedure of the Fines and Recoveries Act, with regard to reversionary interests in personal estate.

The Fines and Recoveries Act required the acknowledgment to be made before two commissioners, but the 7th section of the

Conveyancing Act, 1882, has substituted one only, and has also dispensed with an affidavit and certificate of acknowledgment required by the former act. See the Rules under the Act of 1882, in *Sweet's Concise Precedents*, at p. 22. They provide that the commissioner must not be interested in the matter either as solicitor or party, and must examine the wife, separately from her husband and the solicitor concerned in the transaction, whether she intends to give up her interest, etc. The act of 1882 applies only to deeds executed after its commencement. No married woman, however, by virtue of the Married Women's Property Act, 1882, need acknowledge a deed conveying property accrued to her after 1882; and no woman married after that date need acknowledge any deed at all. See *Sweet*, p. 17.

Acknowledgment of debt or liability. See LIMITATIONS, STATUTE OF.

Aclea [fr. *ac*, an oak, and *leag*, place, Sax.], a field where oaks grow.—*Cunningham.*

Acolyte [fr. ἀκαλόυθος, Gk.], one of the minor orders in the Romish Church, whose office it is, next under the sub-deacon, to follow or wait on the priests or deacons in the ministry of the altar, and perform the meaner offices of lighting the candles, carrying the bread and wine, etc. This officer was in our old English called a *colet*, from which the family of Dean Colet, the founder of St. Paul's school, derived its name.—*Cowel.*

A communi observantiâ non est recedendum; et minimè mutanda sunt quæ certam interpretationem habent. Co. Litt. 365.—(From common usage there should not be any departure, and things which have an ascertained meaning are to be the least changed.)

Acquest or **Acquit**, property obtained by purchase or donation.—*Encyc. Lond.; Civil Law.*

Acquiescence, consent, either express or implied.

Acquietandis Plegiis, an obsolete writ, lying for a surety against the creditor who refuses to acquit him after the debt is satisfied.

Acquietantia de shiris et hundredis, freedom from suits and services in shires and hundreds.—*Cowel.*

Acquisition, the act of procuring property.

Acquitave [fr. *quietum reddere*, Lat.], to acquit, absolve.—*Blount.*

Acquittal [fr. *acquitter*, Fr.; *quietus*, Lat., to free, acquit, or discharge], a deliverance and setting free of a person from the suspicion or guilt of an offence; also to be free from entries and molestations by a superior lord, for services issuing out of lands.—*Cowel.* Acquittal is of two kinds—(1) *Acquittal in deed*, as when a person is cleared by verdict; and (2) *Acquittal in law*, as if two be indicted for a felony, the one as principal and the other as accessory, and the jury acquit the principal, by law the accessory is also acquitted.—2 *Inst.* 384.

Acquittal contracts, a discharge from an obligation, which is either by deed, prescription, or tenure.—Co. *Litt.* 100 *a.*

Acquittance, a release or written discharge of a sum of money or debt due: as where a man is bound to pay money on a bond, rent reserved upon a lease, etc., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in Law that he cannot demand and recover the sum or duty again, if the acquittance be produced.—*Termes de la Ley*, 15.

Acre [fr. αγρος, Gr.; *ager*, Lat.; *acker*, Germ.], a measure of land. The extent of the acre was first, and carefully, defined by statute in the 33 Edw. I., according to which an acre contains 160 square perches, the then perch being $5\frac{1}{2}$ yards. See *Blount's Law. Dict.* The imperial or standard English acre contains four roods, each rood forty poles or perches, each pole $272\frac{1}{4}$ square feet, and consequently each acre = 43,560 square feet.—See Weights and Measures Act, 1878. The French acre, *arpent*, contains $1\frac{1}{4}$ English acres, or 54,450 square English feet. The Welsh acre contains commonly two English acres. The Irish acre is equal to 1 acre, 2 roods, and 19 perches $\frac{22}{121}$ English; the Scotch, $6,150\frac{2}{5}$ square yards.

Act in Pais [*Pais*, Law Fr., country], a thing done out of court, and not a matter of record.—2 *Bl. Com.* 294.

Act of Attainder. See BILL OF ATTAINDER.

Act of Bankruptcy, an act, the commission of which by a debtor renders him liable to be adjudged a bankrupt; under the Bankruptcy Act, 1883, any one of the following acts:—

(*a*) Having made an assignment of his property in trust for his creditors generally.

(*b*) Having made a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.

(*c*) Having made a conveyance amounting to a 'fraudulent preference.'

(*d*) Having, with intent to defeat or delay his creditors, departed out of England, or being out of England, remained out of England; or having absented himself; or begun to keep house.

(*e*) Having suffered execution on his goods, after (see Bankruptcy Act, 1890, 53

& 54 Vict. c. 71) the goods have been either sold or held by the sheriff for 21 days.

(*f*) Having filed, in the Bankruptcy Court, a declaration admitting his inability to pay his debts or having presented a bankruptcy petition against himself.

(*g*) Having neglected to pay or secure a judgment debt after service of a 'bankruptcy notice.'

(*h*) Having given notice to any creditor of suspension of payment.

See BANKRUPT, DEBTORS' SUMMONS, and *Williams on Bankruptcy*.

Act of Curatory, the order by which a curator, or guardian, is appointed by the Court.—*Scotch Law*.

Act of God. Defined by a Court of Appeal in *Nugent* v. *Smith*, 1 *C. P. D.* 423, as 'a direct, violent, sudden, and irresistible act of nature, which could not, by any reasonable cause, have been foreseen or resisted.'

Act of Grace. The act so termed in Scotland was passed in 1696; it provides for the maintenance of debtors imprisoned by their creditors. It is usually applied in England to insolvent acts, and to general pardons granted at the beginning of a new reign, or on other great occasions.—*Encyc. Lond.; Bell's Dict.*

Act of Oblivion, 12 Chas. II. c. 11.

Act of Parliament, a law made by the Sovereign, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled (*Bl.*); also called a 'statute.'

Acts of parliament are either (1) public; (2) local or special; or (3) private or personal. Public acts are those which affect the whole realm or important parts of it. Local, etc., acts, which are very numerous, and are printed in separate volumes from those which contain the public acts, concern particular localities, as railway or gas and water acts. Private acts concern individuals and families only, as acts naturalising a party, dissolving a marriage, or settling particular estates.

The principal rules for the interpretation of acts of parliament are the following:—(1) a statute begins to operate from the time when it receives the royal assent, unless otherwise provided (33 Geo. III. c. 13). But where an act expires before a bill continuing it has received the royal assent, the latter act takes effect from the expiration of the former, unless otherwise provided, and except as to any penalty (48 Geo. III. c. 106); (2) it is to be construed according to the intent and object with which it was made, and not according to the mere letter; (3) that these points be considered—the old law, the mischief, and the remedy; (4) remedial statutes are to be more liberally, and penal more strictly, construed; (5) in construing a statute, all other statutes made *in pari materiâ* ought to be taken into consideration; (6) a statute which treats of things and persons of an inferior rank, cannot by any general words be extended to those of a superior; (7) where the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the Common Law; (8) a subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, i.e., so clearly repugnant that it necessarily implies a negative, but if the acts can stand together, they shall have a concurrent efficacy; and (9) acts of parliament cannot derogate from the power of subsequent parliaments. As to the important 'Interpretation Act, 1889,' see that title.

Statutes are variously cited; many of the old statutes are called after the name of the place where the parliament which passed them was held, as the Statute of Merton, or Marlebridge, or Westminster; others are denominated entirely from their subject, as the Fines and Recoveries Act, the Non-arrest Act; some are distinguished by their initial words, as the statute *Quia emptores* or *De donis*; some are commonly called after the member of parliament who introduced them, e.g., as Lord Campbell's Act (6 & 7 Vict. c. 96), Russell Gurney's Act. But since the time of Edward II. they are generally cited by naming the years of the sovereign's reign during which the session of parliament was held in which the statute was passed, together with the chapter or particular act, according to its numerical order, e.g., 3 & 4 Wm. IV. c. 74, the chapter, if the act be a local and personal one, being printed in Roman figures, e.g., 20 & 21 Vict. c. xciv. About the year 1850 'short titles' began to be introduced, with the date, e.g., the Common Law Procedure Act, 1852; the Merchant Shipping Act, 1854, etc.; and this useful nomenclature is now almost universal. All the acts of a session together make properly but one statute, and therefore, when two sessions have been held in one year, it is usual to mention stat. 1 or 2. Thus the Bill of Rights is cited as 1 W. & M. st. 2, c. 2.—Consult *Introduction to the Statutes of the Realm*, *Bac. Abr. Statutes; Dwarris on Statutes; Maxwell on Statutes*, 2nd ed.; *Hardcastle on Statutes; Wilberforce on Statutes; and Chitty's Statutes*, vol. i., tit. '*Act of Parliament*.'

Of late years many steps have been taken by the Government with a view to classifying

and consolidating the Statute Law. Various Statute Law Revision Acts have been passed, by which a vast number of obsolete and unnecessary acts and portions of acts have been repealed. See for instance 19 & 20 Vict. c. 64; 24 & 25 Vict. c. 101; 26 & 27 Vict. c. 125; 30 & 31 Vict. c. 59; 33 & 34 Vict. c. 69; 34 & 35 Vict. c. 116; 35 & 36 Vict. cc. 63, 97, 98; 36 & 37 Vict. c. 91; 37 & 38 Vict. cc. 35, 96; 38 & 39 Vict. c. 66; 51 Vict. c. 3; 53 & 54 Vict. c. 33; 53 & 54 Vict. c. 51; and 54 & 55 Vict. c. 67. Moreover numerous consolidation acts (see that title) have been passed since the work of revision was first commenced.

The first volume of the first revised edition of the statutes was published in 1870, and the first volume of a second revised edition in 1888. The first edition was brought down in 18 volumes to 1878. The second edition, of which four volumes have already (1891) appeared, has been brought down to 1830.

Act of Settlement, 12 & 13 Wm. III. c. 2, limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants.

Act of Uniformity, the 13 & 14 Car. II. c. 11, which, by section 4, enacted that the Book of Common Prayer, then recently revised, should be used in every parish church and other places of public worship. An important amendment has been made of this act by the 35 & 36 Vict. c. 35, which *inter alia* provides 'a shortened form of Morning and Evening Prayer.' The 34 & 35 Vict. c. 37 amends the law relating to the Tables of Lessons and Psalter contained in the Prayer Book, and introduces a new and revised Table of Lessons. See further PUBLIC WORSHIP REGULATION ACT.

Acta exteriora indicant interiora secreta. 8 Co. 146.—(External acts indicate undisclosed thoughts.)

Actaindre le meffait [Fr.], to fix the charge of a crime upon one, to prove a crime.—*Carp. Wedgw.*

Actio ad exhibendum, an action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman Law, that is for the recovery of a thing, whether it was movable or immovable.—*Nerl. Quest de Dr.* tome i. 84. *Civil Law.*

Actio bonæ fidei, an action which the judge decided according to Equity, the *judex* thus acting as *arbiter* with a wide discretion. —*Sand. Just.*, 7th ed., 326, 429.

Actio commodati contraria, an action by a borrower against a lender, to enforce the execution of a contract.—*Poth. Prêt. à Usage, n.* 75. *Civil Law.*

Actio condictio indebiti, an action for the recovery of a sum of money or other thing paid by mistake.—*Poth. Promutuum, n.* 140. *Civil Law.*

Actio ex conducto, an action by a bailor of a thing for hire, against a bailee, to compel him to deliver the thing hired.—*Poth. Du Contr. de Louage, n.* 59. *Civil Law.*

Actio contra defunctum cœpta continuitur in hæredes.—(An action begun against a person who dies is continued against his heirs.) This rule does not apply to actions strictly personal.—See *Lansdowne* v. *Lansdowne*, 1 *Mad.* 16; and see infra, ACTIO PERSONALIS.

Actio depositi contraria, an action which a depositary has against a depositor, to compel him to fulfil his engagement towards him.—*Poth. Du Dépôt. n.* 60. *Civil Law.*

Actio depositi directa, an action by a depositor against a depositary, in order to get back the thing deposited.—*Poth. Du Dépôt. n.* 70. *Civil Law.*

Actio judicati, an action after four months had elapsed from the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards, and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and, if at the end of two months the debt was not paid, the land was sold.—*Dig.* 42, t. 1; *Code*, 8, 34; *Civil Law.*

Actio non accrevit infra sex annos, the name of the plea of the Statute of Limitations, when the defendant alleges that the plaintiff's action has not accrued within six years. See LIMITATIONS, STATUTE OF.

Actio non datur non damnificato. Jenk. Cent. 69.—(An action is not given to him who is not injured.)

Actio personalis moritur cum personâ.—(A personal action dies with the person.)—'As if battery be done to a man, if he who did the battery or the other die, the action is gone.'—*Noy*, 9th ed., p. 20. This rule of the Common Law has been encroached upon by various statutes: by 4 Edw. III. c. 7, and 3 & 4 Wm. IV. c. 42, s. 2, as to trespass; and by 9 & 10 Vict. c. 93 (Lord Campbell's Act), as to negligence causing death.

Actio pœnalis in hæredem non datur, nisi forte ex damno locupletior hæres factus sit.—(A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.)

Actio pro socio, an action by which either partner could compel his co-partners to perform their social contract.—*Poth. Contr. de Société, n.* 134. *Civil Law.*

Actio quælibet it suâ viâ. Jenk. Cent. 77. —(Every action proceeds in its own way.)

Action, conduct, something done; also the form prescribed by Law for the recovery of one's due, or the lawful demand of one's right. Bracton defines it:—*Actio nihili aliud est quam jus prosequendi in judicio quod alicui debetur.*—(An action is nothing else than the right of prosecuting to judgment that which is due to any one.) Actions are divided into criminal and civil: criminal actions are more properly called prosecutions, and perhaps, actions penal, to recover some penalty under statute, are properly criminal actions. Actions civil are divided into three classes:—(1) *real,* which concerns real property only, as the action of dower; (2) *personal,* such as concerns contracts, both sealed and unsealed, and offences or trespasses; and (since the Jud. Acts, 1873 and 1875) probates and administrations: the first are called *ex contractu*—they are debt, promises, covenant, account, detinue, revivor, and *scire facias;* the second are *ex delicto,* as case, trover, replevin, and trespass *vi et armis;* (3) mixed, which lie as well for the recovery of the thing as for damages for the wrong sustained, as ejectment. By 3 & 4 Wm. IV. c. 27, s. 36, real actions were abolished, except actions of writ of right of dower, dower, *quare impedit,* and ejectment. By 23 & 24 Vict. c. 126, s. 26, the first three of these were entirely abolished, and it was provided that where any of them would have lain, an ordinary action might be commenced in the Court of Common Pleas.

The term 'action' is now applied to all proceedings in the Supreme Court which would have been commenced by writ in the Superior Courts of Common Law, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham; and all suits formerly commenced by bill or information in the Court of Chancery or by a cause in the Court of Admiralty, or in the Court of Probate (Jud. Act, 1873, s. 100, and R. S. C. 1883, Ord. I., r. 1).

Also stock in a company, or shares in a corporation.—*Fr. Comm. Law.*

Action for poinding of the ground, so called to distinguish it from personal poinding, and can therefore be only against the goods belonging to the debtor. Every person who has a debt secured upon land, or as it is commonly expressed, a *debitum fundi,* whether the security be constituted by law or by paction, is entitled to an action for poinding all the goods on the lands burdened, even though the original debtor on the lands burdened should have been divested of the property in favour of third persons.—*Scotch Law.*

Action of a writ, a phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter.—*Cowel.*

Action of abstracted multures, an action for multures or tolls against those who are thirled to a mill, i.e., bound to grind their corn at a certain mill, and fail to do so.—*Bell's Dict.*

Action of adherence, an action competent to a husband or wife, to compel either party to adhere in case of desertion.—*Scotch Law.*

It is analogous to the English suit for restitution of conjugal rights.

Action on the case. See CASE.

Action prejudicial, otherwise called *preparatory* or *principal,* an action arising from some preliminary doubt, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is a bastard, this point of bastardy must be tried before the cause can proceed. It is, therefore, termed *præjudicialis.*—*Sand. Just.* 7th ed., 439.

Action redhibitory, an action instituted to avoid a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed the buyer would not have purchased it had he known of the vice.—*Civil Law.*

Actionare [i.e., *in jus vocare,* Lat.], to prosecute a person in a cause at Law.—*Thorn's Chron.*

Actionary, a foreign commercial term for the proprietor of an action or share of a public company's stock, a stockholder.

Actionem-non or **Actio-non.** Special pleas began with this allegation, "that the said plaintiff ought not to have or maintain his aforesaid action thereof against him,' *actionem non habere debet.* Hence technically termed the *actio-non.*—*Steph. Plead.* It was abolished by 15 & 16 Vict. c. 76, s. 66.

Actiones compositæ sunt, quibus inter se homines disceptarent, quas actiones, ne populus prout vellet institueret, certas solemnesque esse voluerunt.—(Forms of actions have been framed by which men may dispute among themselves, which forms are made definite and solemn, lest the people proceed as they think proper.)

Actiones in personam, quæ adversus eum intenduntur, qui ex contractu vel delicto obligatus est aliquid dare vel concedere.—(Personal actions are those which are brought against

him who, from a contract or tort, is obliged to give or allow something.)

Actiones nominatæ, writs for which there were precedents. The Statute of Westminster 2, c. 24, gave Chancery authority to form new writs *in consimili casu.* Hence the action on the case.—*Bac. Ab. Court of Chancery, a.*

Actions ordinary, all actions not rescissory.—*Ersk. Pr. L. Scot.* 4, 1, 5.

Actions rescissory, are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction—improbation for the production of a writing in order to have it set aside or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; or (3) actions of simple reduction, for declaring a writing called for null until produced.—*Ersk. Pr. L. Scot.* 4, 1, 5.

Actionum genera maxime sunt servanda. Lofft. 460.—(The nature of actions is strictly to be observed.)

Actionum quædam sunt in rem, quædam in personam, et quædam mixtæ. Co. Litt. 284.—(Some actions are against the thing, some against the person, and some mixed.)

Actitation, a debating of law-suits.

Active debt, a debt whereon interest is paid.

Active trust, a confidence connected with a duty.

Active use, a present legal estate.

Acto [*Acton, Aketon,* Fr. *Hanqueton*], a coat of mail.—*Du Fresne.*

Acton-Burnell, the statute giving the remedy by statute merchant, 11 Edw. I. A.D. 1283, so termed from the place where it was made, situated in Shropshire.—*Cowel;* 2 *Reeves,* c. ix. 158.

Actor, a doer, generally a plaintiff or complainant. In a civil or private action the plaintiff was often called by the Romans *petitor;* in a public action (*causa publica*) he was called *accusator.* (*Cic. ad Att.* l. 16.) The defendant was called *Reus,* both in private and public causes; this term, however, according to Cicero (*De Orat.* ii. 43), might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called *adversarius,* but either party might be called so with respect to the other. Also a proctor or advocate in civil courts or causes. *Actor dominicus,* a term often used for the lord's bailiff or attorney. *Actor ecclesiæ* was sometimes the forensic term for the advocate or pleading patron of a church. *Actor villæ* was the steward or head bailiff of a town or village.—*Cowel.*

Actor qui contra regulam quid addiuxit non est audiendus.—(A plaintiff is not to be heard who has advanced anything against authority.)

Actor sequitur forum rei.—(A plaintiff follows the court of the defendant.)—*Branch, Max.* 4.

Actore non probante reus absolvitur.—(When the plaintiff does not prove his case the defendant is acquitted.)—*Hob.* 103.

Actori incumbit onus probandi.—(The burthen of proof lies on a plaintiff.)—*Hob.* 103.

Acts of Court, legal memoranda of the nature of pleas, especially in Admiralty Courts. See ADMIRALTY.

Acts of Sederunt, ordinances or rules of the Court of Session in Scotland, made under authority of the act, 1540, c. 93, by which power is given to make such statutes as may be necessary for the ordering of processes and the expedition of justice. The Court of Session has also under many acts been empowered to make, and has made, Acts of Sederunt; just as the Courts in England have been empowered to make 'General Rules.'

Acts of the General Assembly of the Church of Scotland. The acts of the general assembly, issued under their legislative powers, are binding on all the members and judicatories of the church. The form of their procedure is regulated by an act of the church (1697), termed the Barrier Act.—*Bell's Scotch Law Dict.*

Acts of Union. With *Wales,* 27 Hen. VIII. c. 26, confirmed by 34 & 35 Hen. VIII. c. 26. With *Scotland,* 5 Anne c. 8, and see 6 Anne cc. 6 and 23. With *Ireland,* 39 & 40 Geo. III. c. 67.

Actuarius, a notary.

Actuary, a registrar of a public body. Also a clerk that registers the acts and constitutions of the Lower House of Convocation; or a registrar in a Court Christian.—*Jacob.* Also an officer appointed to keep Savings-Banks accounts. The manager of an Insurance Company; also a person skilled in calculating the value of life interests, annuities, and insurances.

Actus, a servitude of footway and horseway.—*Civ. Law.*

Actus contra actum, a mutual consent.

Actus curiæ neminem gravabit. Jenk. Cent. 118.—(An act of the Court will hurt no person.) See this maxim exemplified, *Cumber* v. *Wane,* 1 *Str.* 126; and 1 *Smith L. C.*

Actus Dei necnon legis nemini est damnosus aut facit injuriam. 5 Co. 87.—(An act of God and also of Law is hurtful, or operates an injury, to no one.)

Actus Dei nemini nocet.—(The act of God does injury to nobody.)—*Lofft.* 102.

Actus inceptus cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest. Bacon.—(An act already begun the completion of which depends on the will of the parties, may be revoked; but if it depend on the consent of a third person, or on a contingency, it cannot be revoked.)

Actus judiciarius coram non judice irritus habetur, de ministeriali autem a quocunque provenit ratum esto.—(A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified.)—*Lofft.* 458.

Actus legis nemini facit injuriam.—(An act of the Law does injury to no one.)—*Lofft.* 103; 5 *Co.* 116.

Actus legitimi non recipiunt modum. Hob. 153.—(Legal actions do not admit a limitation.)

Actus me invito factus, non est meus actus.—(An act done by me against my will is not my act.)

Actus non facit reum, nisi mens sit rea. 3 Inst. 307.—(An act does not make a man guilty, unless he be so in intention.)

A. D. [Lat.], contraction for Anno domini (In the year of our Lord).

Adawlut, corrupted from *Adalat*, justice, equity; a court of justice. The terms Dewanny Adawlut, and Foujdarry Adawlut, denote the civil and criminal courts of Justice in India. See DEWANNY and FOUJDARRY and *Wilson's Glossary.*

Ad comparendum et ad standum juri.—(To appear and to stand to the Law, i.e., abide the judgment of the Court.)—*Cro. Jac.* 67.

Adcordabilis denarii, money paid by a vassal to his lord upon the selling or exchanging of a feud.— *Encyc. Lond.*

Adcredulitare, to purge one's self of an offence by oath.

Ad damnum (*to the damage*). That part of the writ which states the amount of the plaintiff's injury.—See 1 *Chitt. Pl.* 419.

Addecimate, to take tithes.

Addictio, the giving up to a creditor of his debtor's person by a magistrate. The ordinary means of execution under a law which did not allow execution of a debtor's property.—*Sand. Just.*, 7th ed., 15.

Ad diem (*at the day*).

Addition, the title, or mystery, and place of abode of a person besides his names.—1 *Hen. V.* c. 5; *Termes de la Ley*, 20. By 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient for want of, or imperfection in, the addition of any defendant.

Additionales, propositions or terms added to a former agreement or contract.

Address, a petition, also a place of business or residence.

Address for Service. See INDORSEMENT OF ADDRESS.

Adeling, Ethling, or Edling [*ædelan*, Sax.], noble, excellency. A title of honour among the Anglo-Saxons, properly belonging to the king's children.—*Spelm. Glos.*

Ad ea quæ frequentius accidunt jura adaptantur. Wing. 216.—(The laws are adapted to those cases which more frequently arise.)

Ademption [fr. *adimo*, Lat.], revocation; a taking away of a legacy, i.e., if a testator, after having given a legacy by his will, alienate the subject of it during his life, it is an ademption.—*Ambl.* 402; 2 *Wms. Executors*, 8th ed., 1327—1345. See SATISFACTION.

Ad feodi firmam. To fee farm.—*Fleta, lib.* ii. c. 50, s. 30.

Ad filum aquæ. To the thread or centre line of the stream.

Ad filum viæ. To the centre of the way or road.

Ad finem, abbrev. *ad fin.* [Lat.] (*at*, or *near to the end*).

Adiation, a term used in the laws of Holland for the application of property by an executor. See *Knapp's Privy Council Rep.*, vol. i., p. 107.

Ad idem, tallying in the essential point.

A digniori fieri debet denominatio et resolutio. Wing. 265.—(The title and exposition ought to be made from that which is the more worthy.)

Ad infinitum (*without limit*).

Ad inquirendum, a judicial writ commanding inquiry to be made of anything relating to a cause in the Superior Courts.—*Reg. Judic.*

Ad interim (*in the meantime*).

Adiratus, a price or value set upon things stolen or lost, as a recompense to the owner.—*Cowel.*

Adjournment [fr. *jour*, Fr., a day], a putting off to another time or place, a continuation of a meeting from one day to another. The adjournment of a trial is in the discretion of the Judge.

Adjournamentum est ad diem dicere, seu diem dare. 4 Inst. 27.—(An adjournment is to appoint a day, or to give a day.) Hence the form '*Eat sine die.*'

Adjournment-day, a further day appointed by the judges at the *Nisi Prius* sittings to try issues in fact which were not then ready for trial. See NOTICE OF TRIAL.

Adjudication, giving or pronouncing a judgment or decree. In Bankruptcy Law, adjudication is the act of the Court declaring

a person to be bankrupt. In Scotch Law it is used to express the 'diligence' by which land is attached in security and payment of a debt, or by which a feudal title is made up in a person holding an obligation to convey without procuratory or precept. There is thus (1) the adjudication for debt; (2) the adjudication in security; and (3) the adjudication in implement.—*Bell's Scotch Law Dict.*

Adjudication, contra Hæreditatem Jacentem. When a debtor's heir apparent renounces the succession, any creditor may obtain a decree *cognitionis causâ*, the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.—*Scotch Law.*

Adjudication in debitum fundi. See ACTION FOR POINDING OF THE GROUND.

Adjudication in implement. See ADJUDICATION.

Adjudication stamp, the stamp impressed on or affixed to an instrument after the Commissioners of Inland Revenue have been request under s. 12 of the Stamp Act, 1891, in a case of doubt, to assess the duty chargeable on any instrument. There is an appeal from this assessment to the High Court.

Adjunction. When a thing belonging to one is attached or united to that which belongs to another, whether by inclusion, soldering, sewing, construction, writing, or painting, the whole generally becomes the property of the latter.—*Civil Law.*

Adjuncts, additional judges.

Adjunctum accessorium, an accessory or appurtenance.

Ad jura regis, a writ which was brought by the king's clerk, presented to a living against those who endeavoured to eject him, to the prejudice of the king's title.—*Reg. of Writs,* 61.

Adjuration, a swearing or binding upon oath.

Adjustment [fr. *adjuster*, Fr., to make even] **of a loss,** the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay.—*Marshall,* 4th ed., 499, and see *Lowndes on Average,* 4th ed.

Adjuvari quippe nos, non decipi beneficio oportet. D. 13, 6, 17, s. 3.—(For we ought to be favoured, not deceived, by a benefit.) In illustration of this maxim, see *Blackmore* v. *The Bristol and Exeter Railway Company,* 8 *E. & B.* 1035, 1050—1.

Adlamwr [*ad-lam-gwr*, Cym., one returning], a proprietor who, for some cause, entered the service of another proprietor without agreement, and left him after the expiration of a year and a day, was liable to the payment of thirty pence to his patron.—*Welsh Law.*

Ad Lapidem, Stoneham in Hampshire.

Ad largum (*at large*), used in the following and other expressions: title at large, assize at large, verdict at large, to vouch at large, etc.—*Cowel.*

Adlegiare [fr. *aleier*, Fr.], to purge of a crime by oath.—*Brompt. Chron.* c. 4 & 13.

Ad longum, at length.

Admanuensis, persons who swore by laying their hands on the book.—*Old Law Books.*

Admeasurement, Writ of. It lay against persons who usurped more than their share, in the two following cases; admeasurement of dower, where the widow held from the heir more land, etc., as dower, than rightly belonged to her; and admeasurement of pasture, which lay where any one having common of pasture surcharged the common. —*Termes de la Ley.*

Ad melius inquirendum. A writ directed to a coroner commanding him to hold a second inquest. See *Reg.* v. *Carter,* 45 *L. J. Q. B.* 711, and Coroners Act, 1887, 50 & 51 Vict. c. 71, s. 6 subs. 1 (a), by which the High Court may direct another inquest where necessary or desirable by reason of fraud, rejection of evidence, irregularity of proceedings, etc.

Adminicle, aid, help, or support, 1 Edw. IV. c. 1. In the Scotch Law, it is a term used in the action of proving the tenor of a lost deed, and applicable to any deed tending to establish the existence or terms of the deed, which is lost. In the Civil Law it means imperfect proof.

Adminicular evidence, explanatory or completing testimony.

Administration, the giving or supplying of something.

The disposing of an intestate's property.

The body of ministers appointed by the Crown to carry on the government of the country.

Administrative Business, the business of managing, which is commonly conducted in private by persons having complete discretion, as distinguished from judicial business, which is commonly conducted in open court under specific rules as to evidence, etc.

Administrative Counties. The divisions of the counties of York, Lincoln, Sussex, Suffolk, and Northampton, the county of London, the sixty-one 'county boroughs,' and the other counties of England and Wales, except such parts of them as are not included in London or the county boroughs, form separate 'administrative counties' of themselves

for the purpose of managing, through county councils, the administrative business (see COUNTY COUNCIL) of their respective areas. Local Government Act, 1888, 51 & 52 Vict. c. 41, ss. 1, 31, 40, 46, 100.

Administrator, he to whom the goods and effects of a person dying intestate, or without executors appointing, accepting, or surviving, are committed by the Probate Court (now the Probate, Divorce, and Admiralty Division of the High Court of Justice, Jud. Act, 1873, s. 34). By the 20 & 21 Vict. c. 77, 'Administration shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes.' The following are limited administrations:—*Administration durante minori ætate*, is granted where an infant is entitled to administration, or is made sole executor. The grant is made to the duly appointed guardian of the infant for his use and benefit until he attain the age of twenty-one years, when it ceases. *Administration durante absentiâ* is granted when the next person entitled to the grant is beyond sea, lest the goods perish or the debts be lost. *Administration pendente lite* is granted where a suit is commenced in the Probate Court concerning the validity of a will or the right to administration, until the suit be determined, in order that there may be somebody to take care of the testator's estate. *Administration cum testamento annexo* is granted when there is not any executor named in the will, or if a person be named who is incapable, or one who refuses to act. *Administration de bonis non* is granted when the first administrator dies before he has fully administered. An *ancillary administration*, so called because it is subordinate to the original administration, is granted for collecting the assets of foreigners. It is taken out in the country where the assets are situated. Consult *Williams on Executors and Administrators*. As to the administration of the effects of naval persons, see 28 & 29 Vict. c. 111; and as to civil servants of the Crown, see 31 & 32 Vict. c. 90. The act which abolishes forfeiture for treason and felony enables the Crown to appoint administrators of the estate of convicts (33 & 34 Vict. c. 23).

The Registrars of County Courts may receive applications for letters of administration for transmission to the Probate Court in certain cases where the estate does not exceed £100 (36 & 37 Vict. c. 52; 38 & 39 Vict. c. 27). The administration in bankruptcy of the estate of a person dying insolvent is provided for by the Bankruptcy Act, 1883, s. 125, as amended by the Bankruptcy Act, 1890, s. 21.

Admiral [supposed to be derived from *Amir al bahir*, Arab., commander of the sea or fleet], an officer having high command in the Royal Navy. An admiral has two subordinate commanders under him, a vice-admiral and rear-admiral, distinguished into three classes by the colour of their flags, white, blue, and red. The admiral carries his flag at the main-topmast head, the vice-admiral at the fore-topmast head, and the rear-admiral at the mizzen-topmast head.

Admiralty, the Executive Department of State which presides over the naval forces of the kingdom. The normal head is the Lord High Admiral, but in practice the functions of the Great Office are discharged by several Commissioners, of whom one is the Chief, and is called the First Lord. He is assisted by other Lords and by various Secretaries.

Admiralty. The Probate, Divorce, and Admiralty Division of the High Court of Justice, was, as far as relates to Admiralty, formerly called the High Court of Admiralty, and was held before the Judge of the Admiralty, who formerly sat as deputy of the Lord High Admiral of England until that office was put into commission, and afterwards as deputy of the Lords Commissioners. The Judge now holds his appointment of the Crown as a Judge of the High Court of Justice. There are two divisions of the jurisdiction of the Admiralty branch of the High Court—the Prize Court and the Instance Court. In the Prize Court the Judge has jurisdiction, by virtue of a commission issued under the Great Seal, at the beginning of every war, to proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods which are or shall be taken, and to hear and determine according to the course of the Admiralty and the Law of Nations. In the Instance Court, also, the jurisdiction exercised by the Judge is conferred by a commission under the Great Seal. This is a municipal tribunal, it is a court of record, and its decrees and orders for the payment of money have the same effect as other judgments of the Supreme Court. It has jurisdiction in cases of private injuries to private rights arising at sea, or intimately connected with maritime subjects. Its jurisdiction in cases of torts is confined to wrongs committed at sea, or at least on the water within the jurisdiction of the Admiralty. Such are suits for—

(1) Assaults and batteries committed on the high seas.

(2) Collision of ships.

(3) Restitution of possession of a ship

where there is no *bonâ fide* claim to withhold her; and

(4) Piratical and illegal takings at sea.

In cases of contract, its jurisdiction is confined to those of a maritime nature, as—

(1) Between part owners of a ship. The Chancery Division of the High Court of Justice has a concurrent jurisdiction in this case.

(2) Mariners' and officers' wages. (Also recoverable by action in the other divisions of the High Court of Justice, or before a magistrate.)

(3) Pilotage.

(4) Bottomry and respondentia bonds.

(5) Salvage (which is the compensation to be made to persons by whose assistance a ship or her freight, or loading, has been saved from impending peril, or recovered after actual loss), and suits relating to wreck. Salvage is also recoverable by action in the other divisions, or by summary hearing before magistrates or the Cinque Port Commissioners.

(6) Whenever any ship is under arrest by process issuing from this Court of Admiralty, or when the proceeds of any ship having been so arrested have been brought into the Registry, the Court has jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively. (3 & 4 Vict. c. 65.)

By the Admiralty Court Act, 1861, s. 11, this jurisdiction is extended to the Court in cases where the ship is not under arrest, and a registered mortgagee may now himself institute a suit in the ordinary way, and arrest and detain the ship.

(7) By 3 & 4 Vict. c. 65, the Court has jurisdiction to decide all claims and demands whatsoever, in the nature of towage, for services rendered to any ship or sea-going vessel, whether within the body of a country or upon the high seas.

(8) The same act, s. 6, gave the Court jurisdiction to decide all claims and demands for necessaries supplied to any *foreign* ship, and to enforce payment.

(9) By the Merchant Shipping Act, 1854, ss. 103 & 105, the Court has also jurisdiction to punish for carrying illegal colours.

Proceedings in Admiralty may be *in rem* or *in personam*. By the first, the property in relation to which the claim has arisen, or the proceeds thereof, may be made available to meet the claim. The property is arrested on a warrant from the Court, which is issued on filing a *præcipe* for a warrant, and an affidavit in support of the claim. Upon the arrest of a ship, her apparel and furniture, bail may be accepted for her value, and intermediate earnings, and for the return of the vessel into the hands of the claimant, if the Court should ultimately adjudge the possession to him, or for the amount of the claim.

The Judge of the former Court of Admiralty entertains questions of Admiralty Law in this Division of the High Court (Jud. Act, 1873, s. 5), with power to refer matters to a divisional Court. (*Ib.*, ss. 40, 42, 44.) An appeal lies to the Court of Appeal. (See Jud. Acts, 1873 & 1875.)

This Court formerly had cognizance of all crimes and offences, committed either upon the sea or on the coasts, out of the boundary or extent of any English county, until the 4 & 5 Wm. IV. c. 35, establishing The Central Criminal Court, enacted by its 22nd section that with a view to speedy justice, it should be lawful for the judges to be appointed by the commissions to be issued under the authority of the act, or any two or more of them, to inquire of, hear, and determine any offence committed or alleged to have been committed on the high seas and other places within the jurisdiction of the Admiralty of England, etc.

Certain County Courts have a limited Admiralty jurisdiction under acts of 1868 and 1869, 31 & 32 Vict. c. 71, and 32 & 33 Vict. c. 51.

There is a Court of Admiralty in Ireland; but the Scotch Court was abolished by 1 Wm. IV. c. 69.

The jurisdiction of the Admiralty in the colonies is regulated by the Colonial Courts of Admiralty Act, 1890, 53 & 54 Vict. c. 27, by which an appeal lies from the Colonial Courts to the Privy Council.

Admiralty Acts Repeal Act (28 & 29 Vict. c. 112). This act repeals a number of enactments relating to the powers of the Admiralty, the protection of the Royal Dockyards, naval and marine pay and pensions, and wills or property of deceased officers, seamen, and marines.

Admiralty, Droits of. See DROITS OF ADMIRALTY.

Admission of a clerk by the bishop, when a patron of a church has presented him to it. It is, in fact, the ordinary's declaration that he approves of the presentee to serve the cure of the church to which he is presented. —*Co. Litt.* 344 *a*.

Admissions in evidence, concessions of certain facts by an opponent.

Admittance, giving possession of a copy-

hold estate. It is of three kinds: (1) Upon a *voluntary grant by the lord*, where the land has escheated or reverted to him. (2) Upon *surrender* by the former tenant. (3) Upon *descent*, where the heir is tenant on his ancestor's death.—*Wood*, b. 2, c. 1.

Admittendo clerico, a writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to *admit* and institute the clerk or presentee of the plaintiff.—*Reg. Orig.* 33 *a*.

Admittendo in socium, a writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit.—*Reg. Orig.* 206.

Admonition, a judicial or ecclesiastical censure or reprimand.

Admortization, the reduction of property of lands or tenements to mortmain, in the feudal customs.—*Encyc. Lond.*

Ad Murum, Waltown or Walton.

Ad officium justiciariorum spectat, unicuique coram eis placitanti justitiam exhibere. 2 Inst. 451.—(It is the duty of justices to administer justice to every one pleading before them.)

Adnichiled [fr. *nihil*, Lat.], annulled, cancelled, made void.—28 *Hen. VIII.*

Adolescence, the period between 12 in females and 14 in males till 21 years of age.

Adoption, an act by which a person appoints as his heir the child of another. There is not any law of adoption in this country. *Sand. Just.*, 7th ed., 40 *et seq.*

Adoptive Act of Parliament, an act which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the local authorities or inhabitants of that area. Amongst the many 'adoptive acts,' the more important are, the Act for the Better Regulation of Vestries, 1 & 2 Wm. IV. c. 60, the Baths and Washhouses Act, 9 & 10 Vict. c. 74, the Public Libraries Act, 18 & 19 Vict. c. 55, the Infectious Diseases Notification Act, 1879, the Infectious Diseases Prevention Act, 1890, the Public Health Acts Amendment Act, 1890, and the Museums and Gymnasiums Act, 1891.

Ad ostium ecclesiæ (*Dower*). Where a tenant in fee-simple of full age, openly *at the church door* (where all marriages were formerly celebrated) after affiance made and troth plighted between them, endowed his wife with the whole or such quantity of his land as he pleased, specifying and ascertaining the same; on which the wife, after her husband's death, might have entered without further ceremony. Abolished by 3 & 4 Wm. IV. c. 105. s. 13.

Ad Pontem, Pantown in Lincolnshire.

Adpromissor, an accessory to a promise; in order to give a stipulator greater security, he guaranteed the fulfilment of a promise.—*Sand. Just.*, 7th ed., 354.

Ad proximum antecedens fiat relatio nisi impediatur sententiâ. Jenk. Cent. 180.—(Let relation be made to the nearest antecedent, unless it be prevented by the context.)

Ad quem [Lat.], *to whom.* See JUDEX AD QUEM.

Adquieto, payment.—*Blount.*

Ad questiones facti non respondent judices; ad questiones legis non respondent juratores. Co. Litt. 295.—(Judges do not answer questions of fact; juries do not answer questions of law.)

Ad quod damnum, a writ which ought to be issued before the Crown grants further liberties, as a fair, market, etc., which may be prejudicial to others; it is addressed to the sheriff, to inquire what damage it may do to grant a fair, market, etc. It is also used to inquire of lands given in mortmain to any house of religion, etc.—*Termes de la Ley*, 26.

Adrecare, to do right, satisfy, or make amends.—*Gerve Doroberen, anno* 1170.

Ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet. Co. Litt. 68.—(In order rightly to teach a thing, inquire first into the names; for a knowledge of things depends upon their names.)

Adrogation, the adoption of an *impubes*, i.e., a male under 14, and a female under 12 years old.

Adscripti vel adscriptitii glebæ, a kind of slaves, among the Romans, attached to and transferred along with the land which they cultivated.

Adstipulator, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were co-extensive with the amount of his own stipulation.—*Sand. Just.*, 7th ed., 354.

Ad terminum qui preterit, a writ of entry, which lay for a lessor or his heirs, where a lease of premises had been made for life or years, and after the term had expired the premises were withheld from the lessor or his heirs, by the tenant or other person in possession of them; but now by the 4 Geo. II. c. 28, if a tenant for life, or years, or person holding under him, shall wilfully hold over after the expiration of a notice *in writing*, given by the landlord, and after demand of possession, the tenant will be liable to *double the yearly value*, for so long a time as he

detains the premises, to be recovered by an action of debt. And by the 11 Geo. II. c. 19, s. 21, it is enacted, that if a tenant give notice of his intention to quit the premises (which need not be in writing), and do not deliver up possession at the time mentioned in his notice, he or his executors or administrators will be liable to pay *double rent*, to be recovered by the landlord, either by distress or action at Law.

Ad tunc et ibidem [Lat.] (*then and there*).

Adulteration, the corrupt production of any article, especially food; indictable at common law (see *R.* v. *Dixon*, 3 *M. & S.* 11). The adulteration of bread, corn, meal, or flour, is made a statutory offence by 6 & 7 Wm. IV. c. 37. Besides the earlier statutes of 9 Anne c. 12, 56 Geo. III. c. 58, ss. 2, 3, and 1 Wm. IV. c. 64, s. 13, the adulteration of food and drugs was specially restrained and punished by 23 & 24 Vict. c. 84, 31 & 32 Vict. c. 121, s. 24; and (as to Ireland) by 33 & 34 Vict. c. 26, s. 3. These latter have, however, been repealed by the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63).

By this Act the mixing or the sale 'to the prejudice of the purchaser' with knowledge of adulterated food or drugs, is subject for a first offence to a fine, and for a second to imprisonment with hard labour, and a fine is also imposed on the sale in certain cases of food or drugs not of the quality demanded by the purchaser (unless a label is given, showing the article to be mixed with other matters), or the abstracting a part of any article of food so as to injuriously affect it. Provision is made for the appointment and duties of analysts, and the proceedings necessary to obtain an analysis. Proceedings before justices are allowed on the certificate of an analyst, which is to be *primâ facie* evidence; an appeal being given to quarter sessions. Justices in the Court of First Instance or on appeal are allowed to obtain a further analysis. Punishment is imposed for the forgery of certificates or warrants under the Act. There is also a special provision in reference to tea. The act is amended by the Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 Vict. c. 30, the principal provision of which, passed in consequence of conflicting decisions in England and Scotland (see *Hoyle* v. *Hitchman*, 4 *Q. B. D.* 236), is that in a prosecution for a sale 'to the prejudice of the purchaser' it is no defence to allege that the purchase was for the purpose of analysis.

As to the adulteration of seeds, see 32 & 33 Vict. c. 112, and 41 Vict. c. 17, and as to the fraudulent sale of margarine, a harmless composition of animal fats sometimes mixed with and sold as butter, see Margarine Act, 1887, 50 & 51 Vict. c. 29. Compare the title *Unsound Food.*

Adulterine, the issue of an adulterous intercourse.

Adulterine guilds, traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges.—*Smith's Wealth of Nations*, b. i. c. 10.

Adulterium, a fine imposed for the commission of adultery.

Adultery [*ad*, Lat., and *alter*, another person], anciently termed *Advowtry* (*quasi ad alterius thorum*). The sin of incontinence between two married persons, or it may be where only one of them is married, in which case it may be called *single* adultery to distinguish it from the other, which has sometimes been called *double*.

By 20 & 21 Vict. c. 85, which created a Court for Divorce and Matrimonial Causes, a husband can obtain a dissolution of his marriage upon the ground of his wife's adultery, and a wife can obtain a judicial separation on the ground of her husband's adultery, or a dissolution of marriage on the ground of his adultery, coupled with cruelty or desertion, or bigamy, or of his incestuous adultery, provided there be no collusion or connivance, and that the alleged charges have not been condoned. By s. 33 of the same act, a husband may claim damages from an adulterer (who, in ordinary circumstances, must be made a co-respondent, s. 28) to be assessed by a jury, and the Court has power to direct in what manner the damages shall be paid, and that the whole or any part thereof shall be settled for the benefit of the children, or the wife. See further HUSBAND AND WIFE.

Where a man finds another in the act of adultery with his wife, and kills him or her, in the *first transport of passion*, he is only guilty of manslaughter, and that in the lowest degree; but the killing of an adulterer deliberately and upon revenge, is murder.—*Russ. on Crimes*, 5th ed., Vol. I., 687.

The husband of an adulteress is relieved from the obligation to support her, though he himself have committed adultery, and was the first offender.

The word is also used by ecclesiastical writers to describe the intrusion of a person into a bishopric during the former bishop's life. The reason of the appellation is, that a bishop is supposed to contract a sort of spiritual marriage with his church.

Adurni portu, de, Etherington, or Ederington.

Ad valorem, a term used in speaking of

the duties or customs paid on certain goods; the duties on some articles are paid by the number, weight, measure, tale, etc., and those on others are paid *ad valorem*—that is, according to their value. The term is used also of stamp duties, which, in many cases, are payable according to the value of the subject matter of the particular instruments or writings. See STAMP DUTIES.

Advance [fr. *avancer*, Fr., to push forwards, fr. *avant*, Fr., *avante*, It., *ab ante*, Lat.], money paid before it is due; increase.

Advancement, promotion; additional price. To the doctrine of resulting trusts there is a very important exception, for in Equity, where a purchase is made in the name of a wife or child, or of an illegitimate child, grandchild, or nephew of a wife, to whom the purchaser has placed himself *in loco parentis*, there will *primâ facie* be no resulting trust for such purchaser, but, on the contrary, a presumption arises that an advancement was intended, pursuant to the obligation to provide for such relations. And a purchase by a parent in the joint names of himself and his child, as well as a purchase in the joint names of his child and a stranger, will be held an advancement for the child to the extent of the interest vested in him; the stranger, however, holding the estate vested in him in trust for the parent.

Advent, a coming to; also the month preceding the anniversary of the nativity of Jesus Christ. It begins on the Sunday that falls either upon St. Andrew's Day, the 30th November, or next to it, and continues till the feast of Christmas Day.—*Blount.*

Adventitious, that which comes unexpectedly or incidentally.

Ad ventrem inspiciendum [*to inspect the womb*]. See DE VENTRE INSPICIENDO.

Adventure [fr. *advenire*, Lat., to come to], the sending to sea of a ship or goods at the risk of the sender.—*Lex. Merc.*

Adventure, bill of, a writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

Adversaria [*adversa*, things remarked or ready at hand], rough memoranda, commonplace books.

Adversary, a litigant-opponent.

Adverse possession, occupancy, as against the person rightly entitled, of realty without molestation, which may at length ripen into an unimpeachable title. As to adverse possession, see Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued. See also *Nepean* v. *Doe*, 2 *M. & W.* 910, and 2 *Smith's L. C.*

Advertisement [fr. *avertissement*, Fr.], a public notice or announcement of a thing.

The duties payable on advertisements were repealed by 16 & 17 Vict. c. 63, s. 5.

Persons affixing to walls, etc., any advertisements 'of any indecent or obscene nature' may be summarily proceeded against under the Indecent Advertisements Act, 1889, 52 & 53 Vict. c. 18.

The owner of land used for advertisements and not otherwise occupied is rateable, according to the value of such use, by virtue of the Advertising Stations (Rating) Act, 1889, 52 & 53 Vict. c. 27.

Advertising for stolen or lost property. See STOLEN GOODS.

Advertising an apology *for libel.* See LIBEL.

Advertising as to betting. See 37 Vict. c. 15, s. 3, whereby penalties are imposed.

Advertising Vehicles, prohibition of in metropolitan thoroughfares. 16 & 17 Vict. c. 33, s. 16.

Advice [fr. *avis*, Fr., *vaviso*, It., *avice*, Old Eng.], view, opinion, counsel; also, the instruction usually given by one merchant or banker to another by letter, informing him of bills or draughts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonoured for *want of advice.*

Advisement, deliberation.

Ad vitam aut culpam, an office which is to determine only by the death or delinquency of the holder, or which is, in fact, held *quamdiu se bene gesserit* (so long as he conducts himself properly).—*Jacob.*

Advocare [(Lat.) *Tyman getyman*, Ang.-Sax.], to defend, to call to one's aid, also to vouch, to warranty.—*Anc. Laws of England.*

Advocate [Lat. *advocatus*], a patron of a cause assisting his client with advice, and pleading for him.—*Spel. Glos.* He is defined by Ulpian (*Dig.* 50, tit. 13) to be any person who aids another in the conduct of a suit or action.

In the English Ecclesiastical and Admiralty Courts, until 1857, certain persons learned in the civil and canon law, called advocates, had the exclusive right of acting as counsel. They were members of a college situate at Doctors' Commons, incorporated by charter, June 22, 8 Geo. III., under the

title of 'The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts,' and had previously to their admission to that college, taken the degree of Doctor of Laws at an English university. The jurisdiction of the Ecclesiastical Courts in matters matrimonial and testamentary was in 1857 transferred to the Court for Divorce and Matrimonial Causes and the Court of Probate respectively. See 20 & 21 Vict. c. 85, s. 15, c. 77, ss. 40—42. By ss. 116 and 117 of the latter act, the College of Doctors of Law, etc., was empowered to sell its real and personal estate, and to surrender its charter. See BARRISTER.

In Scotland all counsel are called advocates.

Advocate, Lord, the principal Crown Lawyer in Scotland, and one of the great Officers of State of Scotland. It is his duty to act as public prosecutor; but private individuals injured may prosecute upon obtaining his concurrence. He is assisted by a Solicitor-General and four junior counsel, termed advocates-depute. He has the power of appearing as public prosecutor in any court in Scotland, where any person can be tried for an offence, or in any action where the Crown is interested, but it is not usual for him to act in the inferior courts, which have their respective public prosecutors, called procurators-fiscal, acting under his instructions. He does not, in prosecuting for offences, require the intervention of a grand jury, except in prosecutions for treason, which are conducted according to the English method. The Lord Advocate is virtually Secretary of State for Scotland.

Advocate, Queen's, a member of the College of Advocates, appointed by letters patent, whose office is to advise and act as counsel for the Crown in questions of civil, canon, and international law. His rank is next after the Solicitor-General.

Advocates, Faculty of, the bar of Scotland in Edinburgh. The solicitors practising in Aberdeen also use the name of 'Advocates.' The Faculty of Advocates in Edinburgh is coeval with the Institution of the College of Justice in Scotland, in 1532. The Library of the Faculty is one of those entitled to a copy of every printed book (5 & 6 Vict. c. 45, s. 8). The Dean of Faculty is elected from their number to preside at their meetings. Formerly the Dean of Faculty and the two Crown lawyers (the Lord Advocate and Solicitor-General) were the only persons who took precedence at the Scottish bar, independently of seniority; but the practice has lately been introduced of appointing the two ex-Crown lawyers, as well as the Crown lawyers for the time, Queen's Counsel. As to the stamp duty payable upon an advocate being called to the bar of England or Ireland, see 37 & 38 Vict. c. 19. As to the admission of advocates as solicitors in England, see 35 & 36 Vict. c. 81.

Advocati, patrons of churches.—*Blount.*

Advocatia, the quality, function, privilege, or territorial jurisdiction of an advocate.—*Civil Law.*

Advocati fisci, advocates of the revenue among the Romans.

Advocation, a process by which an action was carried from an inferior to a superior court in Scotland. By the Court of Session Act (31 & 32 Vict. c. 100), s. 64, the process of advocation is abolished, and appeals are substituted.

Advocatione decimarum, a writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.—*Reg. Orig.* 29.

Advocatus qest, ad quem pertinet jus advocationis alicujus ecclesiæ, ut ad ecclesiam, nomine proprio, non alieno possit præsentare. Co. Litt. 119.—(A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another.)

Advocatus diaboli, the advocate who argues against the canonization of a saint.

Advow, or **Avow,** or **Avouch** [under the feudal system, when the right of a tenant was impugned, he had to call upon his lord to come forward and defend his right. This, in the Latin of the time, was called *advocare*, Fr. *voucher à garantie*, to vouch or call to warrant. As the calling the lord of the fee to defend the right of the tenant involved the admission of all the duties implied in feudal tenancy, it was an act jealously looked after by the lords, and *advocare*, or the equivalent, Fr. *avouer*, to avow, came to signify the admission by a tenant of a certain person as feudal superior. Finally, with some grammatical confusion, the words *advocare*, and avow or avouch, came to be used in the sense of performing the part of the vouchee, or person called on to defend the right impugned. *Wedgw.*], to justify or maintain an act, e.g., one distrains for rent, and he that is distrained brings an action of replevin; if the distrainer, in his defence, justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry. See AVOWRY.

It also signifies to call upon or produce —thus, anciently, where stolen goods were bought by one and sold to another, it was lawful for the right owner to take them wherever they were found, and he in whose

possession they were found was bound to produce the seller to justify the sale, and so on, till they found the thief.—*Old Nat. Br.* 43.

Advowee, or **Avowee,** the person or patron who has a right to present to a benefice.—*Fleta*, lib. v. c. 14.

Advowee paramount, the sovereign, or highest patron.

Advowson [Fr. *advocare*, Lat.], a right of presentation to, or the patronage of, a church or spiritual living; the person possessed of this right or patronage being called the patron or advocate (*patronus aut advocatus*), on account of his obligation to protect and defend the privileges of the particular benefice. An advowson is in the nature of a temporal property and spiritual trust. For the origin and history of advowsons, consult *Mirehouse on Adowsons*, pp. 1—6.

There are several kinds of advowsons, viz. :—

(I.) Presentative advowsons, subdivided into,
- (α) Appendant.
- (β) In gross, and
- (γ) Partly appendant, and partly in gross.

(II.) Donative advowsons.

(III.) Collative advowsons.

A presentative advowson appendant is a right of patronage annexed to the possession of some corporeal hereditament. Thus, where an advowson has immemorially passed together with a real or imputed manor by a simple grant of such manor, without particularly referring to the advowson, it is then said to be appendant, i.e., annexed to the demesnes of such manor, which subsist perpetually.

A presentative advowson in gross is a right of patronage self-subsistent, belonging to the patron as an individual, and not in any wise appendant to a corporeal inheritance.

While a few advowsons were originally in gross, as when the right originated in an agreement that a builder of a certain church and his heirs should be its patrons *ratione fundationis*, yet the greater number of them was primarily appendant, becoming by subsequent circumstances severed in gross.

The severance may take place in several modes:—(1) when the corporeal inheritance is conveyed away, with a special reservation of the advowson; (2) when the advowson is granted away, and not the corporeal inheritance to which it was incident; (3) when the patron presents to it as though it were already severed. An advowson once completely and unconditionally severed, can never again become appendant. But should an advowson be disappended conditionally, as in the case of a mortgage, it will reunite when the loan is repaid. So, if the advowson be excepted in a lease of the corporeal inheritance, it remains in gross during the lease, but upon its expiration it becomes appendant again. These instances, however, are rather suspensions than severances.

A disappendancy created by a wrongful act, may be done away with by defeating such act; and should it be effected by operation of law, the appendancy will be preserved unless otherwise expressly intended.

A presentative advowson may be partly appendant and partly in gross; thus, when the owner grants to another every second presentment, for then the advowson will be appendant for the grantor's turn, and in gross for that of the grantee. And should the advowson appendant, and that in gross be afterwards possessed by the same person, still the advowson will be appendant for one turn, and in gross for the other. So, if three persons be seised of a manor with a presentative advowson appendant, and two of them release their right of the patronage to the third, he then becomes seised of two-thirds of the advowson as in gross and of the unsevered third as appendant; but upon the death of this third person, the entire advowson will devolve in gross upon his heirs or devisee.—*Mirehouse on Advowsons*, 20.

A donative advowson is a spiritual preferment, not presentable, conferred by the royal letters-patent upon the founder of a church or chapel, to be visited by the founder and not the bishop or ordinary. The deed of donation gives to the parson possession without any presentation, institution, or induction. A donative advowson never lapses, unless, by the terms of the foundation, or by act of parliament, it is subject to lapse (1 Geo. I. st. 2, c. 10, ss. 6 and 7); but the bishop may compel the patron to fill the benefice by ecclesiastical censure. The complete dominion over the vacant benefice, and the freehold in it, remain in the patron, together with the right to take the intermediate profits until it is again granted by him to a new incumbent. The right of donation always devolves upon the real representatives of the patron, and never devolves upon the Crown, when the incumbent is promoted to a bishopric. The resignation of a donative must be to the patron.

A collative advowson arises when a bishop has the right of patronage, either originally or by lapse. Collation is the conferring of a benefice by a bishop. It is an immediate institution without any presentation, and is completed by the induction of the collatee.

Where a bishop collates and dies before induction, the Crown presents as having in its custody the temporalities of the vacant bishopric.

A presentative advowson may be sold and conveyed in fee, fee-tail, for life, for years, for the next presentation, or any number of future presentations. It may be limited in possession, reversion, or remainder, and held in joint-tenancy, tenancy in common, or coparcenary. It is also subject to curtesy and dower, and, being deemed assets for the payment of debts (except during an actual vacancy), may be sold by an order of the Court of Chancery. An advowson in gross cannot be extended under an *elegit*, because it is not susceptible of being valued, but it is chargeable in Equity under 1 & 2 Vict. c. 110, s. 13.

The alienation of an advowson may result (1) from some wrongful act, as an usurpation (or, as the civil law calls it, an intrusion), which prevents the patron from presenting for that turn only (7 Anne, c. 18), or a disseisin, the disseisor presenting before the person disseised; (2) from operation of law, as dower, curtesy, and descent-cast; or (3) from the conveyance of the proprietor, either expressly by granting it, or incidentally by a transfer of the corporeal inheritance to which the advowson is appendant, as it passes under the word 'appurtenances,' except in the case of the Crown, when it will not pass without particular words or express mention of it (17 Edw. II. c. 15; 1 Inst. 307 *a*); for nothing will pass by a royal grant, but that which is clearly and explicitly intended.

So a right to present to a future avoidance may be expressly aliened by the same means. An avoidance is either in deed, upon the incumbent's death, or in law, upon resignation, plurality, deprivation, incapacity, union, or simony. An actual vacancy can never be granted, except by the Crown, for this would be simony.

All ecclesiastical persons seised of advowsons in right of their churches, all masters and fellows of colleges, and guardians of hospitals, seised in right of their houses, are restrained from making any grants of things incorporeal, such as advowsons, or appropriations, and next avoidances which lie in grant; such grants are void against their successors, although good against the grantors during their own time.—1 *Eliz.* c. 19; 13 *Eliz.* c. 10.

The patrons of united churches (1 & 2 Vict. c. 106, s. 15 *et seq.*; and 4 & 5 Vict. c. 39, s. 23) have several rights, for though there be but one advowson, yet every patron has the whole advowson in his turn, since the patronage remains as before, though by the union the incumbency of one church is extinguished; and though the incumbency of the churches is united, the tithes, boundaries, moduses, and profits continue as before, for, there can be no union of parishes, though there be of churches.

The patron of the most valuable church has the first presentment, and a subject-patron of the benefice of the greatest value has his turn before the sovereign patron of a lesser church.—*Com. Dig.* tit. '*Advowson*,' *F.* 2.

As no change is made by union in the rights of patronage, which are reserved to the patrons, the advowsons continue as before, both in their nature and right.—*Mirehouse on Advowsons*, c. 6.

As to the exchange of advowsons, see 3 & 4 Vict. c. 113, s. 73, and 4 & 5 Vict. c. 39, s. 22. As to the sale of advowsons held by or in trust for parishioners and others forming a numerous class, see 19 & 20 Vict. c. 50. By the Lord Chancellor's Augmentation Act, 26 & 27 Vict. c. 120, the Lord Chancellor is authorised to sell the numerous advowsons specified in the schedule to that act, the proceeds to be applied in the augmentation of benefices and otherwise. As to the union of contiguous benefices in cities, towns, and boroughs, see 23 & 24 Vict. c. 142.

Ædudæ, the Hebrides or Western Isles of Scotland.

Ædificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201.—(It is not permitted to build upon one's own land that which may be injurious to another.)

Ædificatum solo, solo cedit. Co. Litt. 4 *a*.—(That which is built upon the land goes with the land.) See FIXTURES.

Æfesn [*Pasnagium* or *Pannagium*, Lat.], the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

Æglesburgus, Aylesbury in Buckinghamshire.

Ægylde, or **Agylde**, or **Orgylde** [*inultus*, Lat.], uncompensated, unpaid for, unavenged. From the participle of exclusion, a, æ, or ex (Goth.), and Gild, *payment, requital.*—*Anc. Inst. Eng.*

Ægyptians, commonly called *Gypsies*. See GYPSIES.

Æhlip, transgression of the law.—*Ancient Inst. Eng.*

Æhte-swan [*Servus Porcarius*, Lat.], a swine herd, from 'æht,' *possessio pecus*, and 'swan' (Old Norse or Icelandic, *sveinn*), a *servant.*—*Ibid.*

Ælmfeoh, or **Ælmsfeoh**, Peter pence, which used to be paid to the Pope.

Æquitas est correctio legis generaliter latæ,

quâ parte deficit. Plowd. 375, quoting Aristotle.—(Equity is a correction of law when too general, in the part in which it is defective.)

Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem. Plowd. 467, quoting Aristotle, Nic. Eth. Book 5.—(Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.)

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat: nullâ scripturâ comprehensa, sed solâ ratione consistens. Co. Litt. 24.—(Equity is a sort of perfect reason which interprets and amends the written law; comprehended in no code, but depending on reason alone.)

Æquitas est quasi æqualitas. Co. Litt. 24.—(Equity is as it were equality.)

Æquitas nunquam contravenit leges.—(Equity never counteracts the laws.)

Æquitas sequitur legem. Gilb. 186.—(Equity follows law.) See illustrations of this maxim in *Haynes' Outlines of Equity*, 3rd ed., 26—30.

Æquum et bonum est lex legum. Hob. 224,—(That which is equal and good is the Law of Laws.)

Æra, or **Era,** a fixed point of chronological time, whence any number of years is counted; thus, the Christian Era began at the birth of Christ, and the Mohammedan Era at the flight of Mohammed from Mecca to Medina. The derivation of the word has been much contested.

The difference between the terms *æra* and *epoch* is, that *æras* are certain points fixed by a people or nation, and *epochs* are points fixed by chronologists and historians. The idea of an *æra* comprehends also a succession of years proceeding from a fixed point of time, and the *epoch* is the point itself.—*Koch's History of Europe, Introd.; Encyc. Lond.*

Ærie [fr, *æria accipitum*, Lat.], an airy or nest of goshawks.—*Spel. Glos.*

Æstimatio capitis [*pretium hominis*, Lat.], fines paid for offences committed against persons according to their degree and quality, by estimation of their heads, ordained by King Athelstane.—*Cress. Ch. Hist.* 834.

Æstimatio præteriti delicti ex postremo facto nunquam crescit. Bacon.—(The weight of a past offence is never increased by a subsequent fact.)

Ætate probanda, a writ which inquired whether the king's tenant holding in chief by chivalry, was of full age to receive his lands. It was directed to the escheater of the county. Now disused.—*Reg. Orig.* 294.

Ætheling, a noble, though generally signifying a prince of the blood.—*Anc. Inst. Eng.*

Æthlyp [fr. *evasio*, Lat., escape, assault]. The old Latin version renders it *conclamatio.*—*Ibid.*

Affairs, a person's concerns in trade or property.

Affectio tua nomen imponit operi tuo. Co. Litt. 177.—(The affection of a person gives a name to his work.)

Affectum, challenge-propter.—See JURY.

Affectus punitur licet non sequatur effectus.—9 Co. 55.—(The intention is punished, although the consequence does not follow.)

Affeerors [fr. *afeurer*, or *afferer*, Fr., to tax, fr. *forum*, Lat., a market], persons who, in courts-leet, upon oath, settle and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, etc., in courts-baron.—*Cowel.* Shakespeare was an affeeror in Stratford-on-Avon.

Affiance [fr. *fidem dare*, Lat.], the plighting of troth or promise between a man and woman, upon agreement of marriage.—*Termes de la Ley*, 27; *Litt.* s. 39.

Affidare, to plight faith, or give or swear fealty, i.e., fidelity.—*Blount.*

Affidari [*seu affidari ad arma*, Lat.], to be mustered and enrolled for soldiers upon an oath of fidelity.—*MS. Dom de Farendon*, 22, 55.

Affidatio dominorum, an oath taken by the lords in parliament.—*Ibid.*

Affidatus, a tenant by fealty, a retainer.—*Blount.*

Affidavit [fr. *affidare*, M. Lat., to pledge one's faith, fr. *fides*, Lat.], a written statement sworn before a person having authority to administer an oath.

By the practice of the Supreme Court of Judicature, all evidence is, as a rule, to be given *vivâ voce*; but this may be altered by agreement of the parties (as, in imitation of the Chancery practice before the Judicature Acts, it is usually altered in actions in the Chancery Division of the High Court), or the Court or a judge may for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial on such conditions as are thought reasonable; provided that no such order be made where a witness can be produced and is *bonâ fide* required for cross-examination (R. S. C. 1883, Ord. XXXVII., Rule 1). Affidavits must be confined to such facts as the witness is able of his own knowledge to prove,

except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted.

As to time for filing affidavits see Ord. XXXVIII., Rule 25.

Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript (R. S. C. 1883, Ord. LXVI., Rule 4).

Where the above rules do not state anything to the contrary, the practice previously existing in reference to affidavits is still applicable (Jud. Act, 1873, s. 73). Applications for attachments, certiorari, criminal information, mandamus, quo warranto, and other processes are usually made on affidavit (see, e.g., Rule 53 of the Crown Office Rules of 1886), and by R. S. C. 1883, Ord. LII., Rule 4, copies of affidavits intended to be used on the hearing of a motion are to be served on the other party together with the notice of motion.

The Commissioners for Oaths Act 1889, 52 Vict. c. 10, repealing 24 enactments from 16 & 17 Car. 2 c. 9 to s. 18 of the Solicitors Act, 1877, regulates the appointment and powers of commissioners to 'administer any oath or take any affidavit' in England or elsewhere. See COMMISSIONER FOR OATHS, and also AFFIRMATION, and DECLARATION.

Affidavit of Increase.—See INCREASE.

Affidavit Office in Chancery, abolished by 15 & 16 Vict. c. 87, ss. 27 & 29, and its duties transferred to the Clerks of Records and Writs.

Affidavit to hold to bail.—By 1 & 2 Vict. c. 110, s. 3, it was provided that upon an affidavit of the existence of a debt to the amount of 20*l.* or upwards, and that a defendant was about to quit England, it was made lawful for any plaintiff to apply to a judge to hold such defendant to bail. But now, by 32 & 33 Vict. c. 62, s. 6, this power can only be exercised where the debt amounts to 50*l.* or upwards, and where it can be shown that the defendant's absence from England will materially prejudice the plaintiff in the prosecution of his action.

Affiliation, the fixing any one with the paternity of a bastard child, and the obligation to maintain it. The process is regulated by the Bastardy Acts, 1872 and 1873, the Poor Law Amendment Act, 1844, 7 & 8 Vict. c. 101, ss. 4—8, and 8 Vict. c. 10. See BASTARD, and *Saunders on Affiliation.*

Affinage [*purgatio metalli,* Lat.], refining metal, hence fine and refined.—*Blount.*

Affinitas affinitatis, the connection which has neither consanguinity nor affinity, as, the connection between a husband's brother and his wife's sister.

Affinitas dicitur, cum duæ cognationes, inter se divisæ, per nuptias copulantur et altera ad alterius fines accedit. Co. Litt. 157.—(It is called affinity, when two families, divided from one another, are united through marriage, and either approaches the confines of the other.)

Affinity, relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband.—1 *Bl. Com.* 434.

Affinity is distinguished into three kinds. (1) *Direct,* or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood. (2) *Secondary,* or that which subsists between the husband's and his wife's relations by marriage. (3) *Collateral,* or that which subsists between the husband and the relations of his wife's relations.

Affirm, to ratify or confirm a former law or judgment.—*Cowel.*

Affirmance, the confirmation of a voidable act.

Affirmant, a person who solemnly affirms, instead of taking an oath.

Affirmanti, non neganti, incumbit probatio. —(The proof lies upon him who affirms, not upon him who denies.)

Affirmation, a solemn declaration without oath; the being allowed to make it was an indulgence at first confined to the people called *Quakers,* and *Moravians* (9 Geo. IV. c. 32, s. 1; 3 & 4 Wm. IV. c. 49), and to *Separatists* (3 & 4 Wm. IV. c. 82), but was afterwards extended to all persons objecting to take an oath. See 16 & 17 Vict. c. 125, s. 20; 24 & 25 Vict. c. 66 (criminal proceedings), 30 & 31 Vict. c. 35, s. 8 (jurors); and particularly the Evidence Amendment Act, 1869, 32 & 33 Vict. c. 68, s. 4 (extended to evidence before arbitrators and others by 33 & 34 Vict. c. 49, s. 1), under which persons having no religious belief, were first allowed to affirm, the former statutes having applied only to persons prevented by a religious belief from taking an oath.

The Act of 1869, however, did not apply to promissory oaths, e.g., to the oath directed by the Parliamentary Oaths Act, 1866, as amended by the Promissory Oaths Act, 1868, to be taken by members of parliament (*Clarke* v. *Bradlaugh,* 7 *Q. B. D.* 38).

Finally therefore the Oaths Act, 1888 (see OATHS), 51 & 52 Vict. c. 46, has allowed every person objecting to be sworn to affirm, instead of taking an oath, in all places and for all purposes where an oath is required by law.

Affirmative pregnant, an assertion implying a negation.

Affirmativum negativum implicat.—(An affirmation implies a negative.)

Afforare, to set a price or value on a thing. See AFFEERORS.—*Blount.*

Afforatus, appraised or valued, as things vendible in a fair or market.—*Ibid.*

Afforciare, Afforce, to add, increase, or make stronger; in case of disagreement of the jury, let the assize be increased, which is an afforcement of the assize.—*Ibid.*

Afforest, to turn ground into a forest.—*Chart. de Forest*, c. 1.

Affranchise, to make free.

Affray [fr. *effrayer*, Fr., to affright], a skirmish or fighting between two or more persons; there must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray. It is a public offence, and is so called because it affrights persons. It differs from an assault in that it is a wrong to the public, while an assault is of a private nature.—1 *Hawkins, P. C.* 154.

Affreightment [fr. *fret*, Fr.], the freight or lading of a ship.— *Cowel.* See CHARTER-PARTY.

Affri, or **Affra,** bullocks, horses, or beasts of the plough.—*Ibid.*

Aforesaid, already mentioned. — *Plowd.* 67.

Aforethought, prepense, premeditated.

A fortiori [*by so much stronger* (*reason*), Lat.]. It is thus applied :—A private person, and *à fortiori*, a peace officer (*it being his especial duty*), who is present at the commission of a felony, is bound by the law to arrest the felon, on pain of fine and imprisonment. —2 *Hawk. P. C.* 74.

Africa, coast of. By 6 & 7 Vict. c. 13, amended by 23 & 24 Vict. c. 121, provision is made for the government of British settlements on the coast of Africa.

African Company, a company which, under a charter of Charles II., enjoyed an exclusive trade from the port of Sallee, in South Barbary, to the Cape of Good Hope, both inclusive, with all the islands near to those coasts. Several statutes were passed, placing their trade upon a new footing, but the 1 & 2 Geo. IV. c. 28, abolished the company and annulled all the grants made to them; under it the Crown took possession of their forts and castles, and the trade was thrown open.

Aftermath, the second crop of grass after a meadow has been mown for hay.

Agalma [ἄγαλμα, Gr.], an impression or image of anything on a seal.—*Cowel.*

Agard, award.

Age, the criminal responsibility of males and females, and their power to do certain acts, depend upon their age. Thus in criminal matters, a person of the age of fourteen, may be capitally punished for any capital offence, but under the age of seven he cannot. The period between seven and fourteen is subject to much uncertainty; the rule applicable to it depends upon the infant's capacity to discern good from evil; if he could, then the maxim is, *malitia supplet ætatem* (malice supplies the want of age), and he may be convicted and executed. A male at twelve years old may take the oath of allegiance, at fourteen is at years of discretion, so far at least that he may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one he is at his own disposal, may alien his lands, goods, and chattels, and possesses the parliamentary and municipal franchise. A female at twelve is at years of maturity, and may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one may dispose of herself and all her property. Full age in male or female is twenty-one years, which age is completed on the day preceding the twenty-first anniversary of a person's birth. As to marriage settlements by male of twenty or female of seventeen, see MARRIAGE SETTLEMENT.—1 *Co. Litt.* 78; *Bro. Abr.* '*Age.*'

The Roman Civil Law divides age thus ;—

I. *Infantia*, from birth to seven years.

II. *Pueritia.* { (*a*) *Ætas infantiæ proxima*, from 7 to 10½. (*b*) *Ætas pubertati proxima*, from 10½ to 14.

III. *Pubertas*, from 14 upwards. During *infantia* and *ætas infantiæ proxima*, a person was not punishable for any crime. During *ætas pubertati proxima*, a person was liable, if *doli capax*. At *pubertas*, a person became fully responsible.—*Tayl. C. L.* 254 *et seq.*

Agency, deed of, a revocable and voluntary trust for payment of debts.—Consult *Lewin on Trusts.*

Agenfrida, the true lord or owner of anything.—*Cowel.*

Agenhina Agenhine, a guest at an inn, who having stayed there for three nights, was then accounted one of the family.—*Ibid.*

Agent, a person appointed to transact the business of another.—*Dyche.*

Agents may be divided into three classes :—

I. Commercial, as—

(*a*) Auctioneers.
(*b*) Brokers.
(*c*) Factors.
(*d*) Consignees.
(*e*) Supercargoes.
(*f*) Ships'-husbands.
(*g*) Masters of Ships
(*h*) Partners.

II. For the purpose of litigation, as—
(a) Attorneys at Law.*
(b) Solicitors in Equity.*
(c) Proctors in the Spiritual, Probate, and Divorce Courts.*

III. Social, as—
(a) Attorneys in fact.
(b) Servants.

It is a general Common Law rule, that where an authority is given to two or more persons to do an act, the act binds the principal only when all of them concur in doing it; for the authority is construed strictly, and the power is deemed to be joint, unless expressed to be several.

But a more liberal construction in favour of commercial transactions is admitted, for, if a joint consignment be made to two factors (whether partners or not) each possesses the whole power over it, but such joint-factors are co-obligers, and, as such, are jointly accountable and answerable for one another *in solido*. Consult *Evans on Principal and Agent; Sm. Merc. Law; Story on Agency.*

Agent and patient, when the same person is the doer of a thing and the party to whom done; thus, when a widow endows herself of the best part of her husband's possessions, this being the act of herself to herself, she is both agent and patient. Again, if one be indebted to another, and afterwards the debtor makes the creditor his executor, the creditor may retain out of the testator's assets as much as will satisfy the debt; by such retainer he is both agent and patient.—8 *Rep.* 118, 138. *Obsolete.*

Agentes et consentientes, pari pœnâ plectentur. 5 Co. 80.—(Acting and consenting parties are liable to the same punishment.)

Age-prier, or **prayer** [*ætatis precatio*, Lat.], to pray age; thus, when an action is brought against a minor for the recovery of lands, which he possesses by descent, he petitions or moves the Court to stay the action until he attain his majority, which is generally acceded to.—*Termes de la Ley*, 30.

Aggravation, the increase of the enormity of a wrong. Matters of mere aggravation, that is, which tend only to increase the amount of damages, and do not constitute the right of action itself, need not be traversed in pleading. In a count, for example, charging a trespass in pulling down a house, it is mere matter of aggravation to state that the plaintiff was in it at the time.

Aggravated Assaults on females and boys under fourteen, see 24 & 25 Vict. c. 100, ss. 42—3 (replacing extra sections 16 & 17 Vict. c. 30, an act expressly passed 'for the better prevention of aggravated assaults upon women and children'), which allow justices to give a convicted offender six months' imprisonment with hard labour (the maximum term for a common assault being two months), and to bind him over to keep the peace.

Aggregate, a collocation of individuals, units, or things in order to form a whole.

Aggressor, the beginner of a quarrel or dispute.

Agild [*sine mulctâ*, Lat.], free from penalties, not subject to customary fines or impositions.—*Blount.*

Agiler [fr. *a gilt*, Sax., without fault], an observer or informer.—*Ibid.*

Agillarius, a hey-ward, herd-ward, or keeper of cattle in a common field, solemnly sworn at the lord's court. There were two sorts, one of the town or village, another of the lord of the manor.—*Ken. Paroch. Antiq.* 534, 576.

Agio [*aggio*, Ital., an exchange of money for a premium], expresses the difference in point of value, between metallic and paper money or between one sort of metallic money and another.—*McCull. Com. Dict.*

Agiotage, a speculation on the rise and fall of the public debt of states, or the public funds. The speculator is called *agioteur.*

Agistment [fr. *jacere*, Lat.; *gésir*, Fr., to lie, whence *giste*, a lodging], the taking in of other men's cattle into pasture-land, at a certain rate per week, without letting them the land for their exclusive use as tenants; so called, because the cattle are suffered *agiser*, i.e., to be *levant et couchant* there. Also the profit of such feeding. A restriction upon the power of distraining agisted cattle (in some parts of the country called "tacks") for rent is placed by s. 45 of the Agricultural Holdings Act, 1883.

Agistment of sea banks [*terræ agistatæ*, Lat.] is where lands are charged with a tribute to keep out the sea. See also *Manwood's Forest Laws*, cc. 11-80, where to "agist" is to take in and feed strangers' cattle in the Royal Forest and to collect the money due for it.

Agnates, agnati, or **adgnati,** relations derived *per virilis sexus personas*, i.e., relations by the father's side as distinguished from *cognati*, relations by the mother's. An agnate is related by generation; thus, my son, brother, paternal uncle, and their children, as also my daughter and sister, are agnated to me.—See *Smith's Dict. of Antiq.*—*Cognate.*

Agnation, kinship by the father's side.

Agnomen, a name derived from some

* Now styled 'Solicitors of the Supreme Court.' See Jud. Act, 1873, s. 87.

notable personal circumstance, as the name Africanus, borne by the two Scipios on account of their victories over the Carthaginians.—*Cum. C. L.* 170.

Agnomination, a surname.

Agnus Dei (Lat.), a piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the Pope.—*Cowel.*

Agraria lex. The Agrarian law was enacted to distribute among the Roman people all the lands which they had gained by conquest, and to limit the quantity of land possessed by each person to a certain number of acres.—*Cicero pro Leg.; Agr. Smith's Dict. of Antiq.*

An agrarian law was clearly developed in the regulations of the Jewish lawgiver, who, following the example of the Egyptians, made agriculture the basis of the state. He accordingly apportioned to every citizen a certain quantity of land, and gave him the right of tilling it himself, and of transmitting it to his heirs. The person who had thus come into possession could not alienate the property for any longer period than the year of the coming jubilee—a regulation which prevented the rich from coming into possession of large tracts of land, and then leasing them out in small parcels to the poor. See *Graves on the Pentateuch.*

Agreed. This word in a deed creates a covenant.

Agreement [fr. *gratus*, Lat., acceptable; *aggregatio mentium*, Lat.], a joining together of two or more minds in anything done or to be done. See CONTRACT.

Agri, arable lands in common fields.—*Fortescue.*

Agri limitati, lands belonging to the state by right of conquest, and granted or sold in plots.—*Sand. Just.*, 7th ed., 99.

Agricultural (Children) Act, 1873, 36 & 37 Vict. c. 67. This act made regulations with respect to the employment of children under ten years of age. It was repealed by the Elementary Education Act, 1876, 39 & 40 Vict. c. 76, but its principal provisions were in effect re-enacted thereby. There is an exemption of children between 8 and 10 from restrictions of the Education Act, in reference to operations of husbandry, under s. 9, sub. 3 of that act.

Agricultural Fixtures, see FIXTURES.

Agricultural Gangs Act, 30 & 31 Vict. c. 130. This act, after reciting that in certain counties in England certain persons known as gangmasters hire children, young persons, and women, with a view to contracting with farmers and others for the execution on their lands of various kinds of agricultural work, enacts certain regulations to be observed by gangmasters, and requires them to obtain licences. Amended as to children by the Agricultural Children Act, 1873, *ante.*

Agricultural Holdings (England) Act, 1875. By this act, now repealed, provision was made for agricultural tenants (whose tenancies commenced after the commencement of the act, i.e., after February 14th, 1876) obtaining, on the determination of their tenancies, compensation from their landlords for improvements such as buildings, drainage, etc., and for the application of manure to the land, the amount of compensation varying according to a certain classification provided by the act, subject to certain deductions. The act also contained provisions giving the tenant a property in fixtures, and substituting one year's notice for half a year's notice, as the notice necessary to determine a tenancy from year to year. The provisions of the act did not interfere with freedom of contract between the landlord and the tenant: its operation could be excluded from existing tenancies by notice *in writing* from either party to the other within 2 months from its commencement, and from future tenancies by mutual agreement *in writing;* and as a matter of fact the operation of the act was in the vast majority of cases so excluded.

Agricultural Holdings (England) Act, 1883, 46 & 47 Vict. c. 61. An act of the same purpose as the act of 1875 above mentioned (which it repeals), but differing from it in being compulsory as far as the compensation clauses (see s. 55) are concerned, and also in greatly restricting the landlord's right of distress (see ss. 44—52). The act applies to all holdings either wholly agricultural or wholly pastoral, or partly agricultural and partly pastoral, or wholly or partly cultivated as market gardens, held under a landlord for a term of years, or for lives, or for lives and years, or from year to year, by a tenant holding no employment under the landlord. The compensation is payable on the basis of the value of the improvement to an incoming tenant, but the landlord is equally liable to pay it whether there be an incoming tenant or not. The amount is settled by a reference, with an appeal on limited grounds to a County Court Judge. See *Lely & Pearce-Edgcumbe on Agricultural Holdings.*

Agricultural Holdings (Scotland) Acts, 1875 and 1883. Acts of a similar scope to the above, and differing therefrom in respect of procedure only.

Agusadura, in ancient customs, a fee, due from the vassals to their lord for sharpening their ploughing tackle. Anciently, the tenants in some manors were not allowed to have their agricultural implements sharpened by any but those whom the lord appointed; for

which an acknowledgment was paid, called *agusadura* or *agusage*, which some take to be the same with what was otherwise called *rullage*, from the ancient French *reille*, a ploughshare.—*Encyc. Lond.*

Agweddi [*ag-gweed*, conjunction], a portion given with a bride.—*Anc. Inst. Wales.*

Aid of the King [*auxilium regis*, Lat.], the king's tenant prays this, when rent is demanded of him by others. A city or borough, holding a fee-farm from the king, if anything be demanded which belongs to such fee-farm, may pray in 'aid of the king,' and the king's bailiffs, collectors, or accountants, shall have aid of the king. The proceedings are then stayed until the Crown counsel are heard, but this aid will not be granted after issue, because the Crown cannot rely upon the defence made by another.—*Jenk. Cent.* 64 *Termes de la Ley*, 35.

Aid Prayer, formerly made use of in pleading for a petition in Court, praying in aid of the tenant for life, etc., from the reversioner or remainder-man, when the title to the inheritance was in question. It was a plea in suspension of the action.— *Com. Dig.* '*Aide*,' B. 5; 3 *Bl. Com.* 300.

Aiders, advocates, abettors. See ACCESSARY.

Aids [fr. *aides*, Fr.; *auxilia*, Lat.], originally mere benevolences granted by a tenant to his lord in times of distress, but at length the lords claimed them as of right. They were principally three: (1) To ransom the lord's person, if taken prisoner; (2) To make the lord's eldest son and heir apparent a knight; (3) To give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. II. c. 24. Also extraordinary grants to the Crown by the House of Commons, and which were the origin of the modern system of taxation.—2 *Bl. Com.* 63,64.

Aiel, or Aile [fr. *aïeul*, Fr.; *avus*, Lat., a grandfather], a writ which lay when a man's grandfather, or great-grandfather (called *besaile*), died seised of lands in fee-simple, and on the day of his death the heir was dispossessed of his inheritance by a stranger.—*F. N. B.* 222.

Aillt [*aill*, other], a villein.—*Anc. Inst. Wales.*

Ainsty, a district on the south-west of the city of York, annexed thereto 27 Hen. VI., and subject to the Lord Mayor and Corporation under the name of the county of the city of York.—*Gorton's Topographical Dictionary.*

Air. As to the right to the enjoyment of air free and unpolluted, see *Gale on Easements*, and 2 *Br. & Had. Com.* 12, 40.

Airway, a passage for the admission of air into a mine. To maliciously fill up, obstruct, or damage, with intent to destroy, obstruct, or render useless the airway to any mine, is a felony punishable by penal servitude or imprisonment at the discretion of the Court. 24 & 25 Vict. c. 97, s. 28.

Al or **ald** [*eald*, Sax., age]. This syllable prefixed to the names of places denotes antiquity, as Aldborough, i.e., Old Borough, Aldeburgh, Aldworth, Aldgate, etc.—*Blount.*

Ala Campi, Wingfield.

Alæ ecclesiæ, the wings or side aisles of a church.—*Blount.*

Alænus, the river Axe, in Devonshire.

Alanerarius, a manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer.—*Blount.*

Alauna, Alnwick in Northumberland; also Alcester in Warwickshire.

Alba, a surplice or white sacerdotal vest, anciently worn by officiating priests.—*Blount.*

Alba firma. When quit-rents payable to the Crown by freeholders of manors were reserved in silver or white money, they were called white-rents or blanch-farms, *reditus albi*, in contradistinction to rents reserved in work, grain, etc., which were called *reditus nigri*, black-mail.—2 *Inst.* 19.

Albinatus jus, the *droit d'aubaine* in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed by the French laws in June, 1791.

Albo Monasterio, De, Whitechurch.

Albrea and **Alboricus**, Aubrey.

Album, white-rent paid in silver. See ALBA FIRMA.

Albus Liber, an ancient book containing a compilation of the law and customs of the City of London. It has lately been reprinted by order of the Master of the Rolls.

Alcade, a judicial officer in Spain.

Alder, the first, as *alder best* is the best of all; *alder liefest*, the most dear.—*Blount.*

Alder Carr, land covered with alders.—*Norfolk phrase.*

Alderman [*ealdorman*, Ang.-Sax., fr. *eald*, old, *ealdor*, a parent]. Originally the word was synonymous with 'elder,' but was also used to designate an earl, and even a king. The word is now confined to the class of municipal officers in a borough next in order to the mayor. The Municipal Corporation Act, 1835, 5 & 6 Wm. IV. c. 76, which gave aldermen no special duties of any importance, enacted that they should be in number, one-third of the number of the councillors, should remain 6 years in office (being twice the length of the councillors' period of office), and be elected by the councillors, but not necessarily from amongst the councillors; and this enactment is repeated by s. 14 of the

Consolidating Act of 1882. See MUNICIPAL CORPORATION; and as to 'county aldermen,' see COUNTY COUNCIL.

Alderney, one of the islands in the English Channel, which formed part of the Duchy of Normandy, and was annexed to the English Crown by the first princes of the Norman line. These islands are governed by their own laws, chiefly collected in the book called '*Le Grand Coustumier*.' As to Alderney Harbour, see 37 & 38 Vict. c. 92.

Aldithelcia, De, Audley.

Ale. See ALE-HOUSE, and see LICENSE.

Alea, the chance of gain or loss in a contract.—*Civil Law.*

Aleatory contract, an agreement of which the effects, with respect both to the advantages and losses, whether to all parties, or to some of them, depend on an uncertain event. —*Ibid.*

Alecinarium, a hawk, called also a *lanner*.

Ale-conner, or **Ale-kenner** [*gustator cerevisiæ*, Lat.], one who kens or knows what good ale is; an officer appointed at a court-leet, who is sworn to look at the assize and goodness of ale and beer within the precincts of the lordship.—*Kitch.* 46. There were at one time four ale-conners, chosen by the liverymen of the City of London, in Common hall, on Midsummer-day, whose office it was to inspect the measures used in public-houses.—*Encyc. Lond.*

Ale-founder. SEE ALE-CONNER.

Ale-house, a place where ale is sold to be drunk on the premises where sold. Such a house, commonly called also a public-house, has for a long time, by a series of acts consolidated in 1828, by 9 Geo. IV. c. 61, required a license from justices of the peace as well as an excise license; whereas the houses called *beer houses*, first established in 1830 by Geo. IV. & Wm. IV. c. 30, required an excise license only until the passing of the Wine and Beerhouse Act, 1869. See INTOXICATING LIQUORS.

Ale Silver, a rent or tribute paid annually to the Lord Mayor of London, by those who sell ale within the liberty of the city.—*Antiq. Purvey*, 183.

Ale-stake, a maypole or long stake driven into the ground, with a sign on it for the sale of ale.—*Cowel.*

Ale-taster. See ALE-CONNER.

Alfet, a cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow and there held it for some time, as an ordeal.—*Du Cange.*

Algarum maris, probably a corruption of *Laganum maris*, *lagan* being a right, in the middle ages, like *jetsam* and *flotsam*, by which goods thrown from a vessel in distress became the property of the king or the lord on whose shores they were stranded.—*Spel. Jacob* and *Du Cange.*

Alia enormia [Lat.] (*other wrongs*). A declaration in trespass sometimes concluded thus:—'and other wrongs to the plaintiff then did,' etc. This was technically called an allegation of *alia enormia.*

Aliamenta, a liberty of passage, open way, water-course, etc., for the tenant's accommodation.—*Kitch.*

Alias (*otherwise*), a second or further writ, which was issued after a *first* writ had expired without effect.—*Cowel.* Abolished by 15 & 16 Vict. c. 76, s. 10.

Alias (dictus) (*otherwise called*), a second name applied to a person where it is doubtful which of two names is his real name.—*Dyer*, 50.

Alibi (*elsewhere*). It is a defence resorted to where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was being committed.—*Encyc. Lond.* This defence, necessarily, is not confined to criminal trials.

Alien [fr. *alienigena alibi natus*, Lat.], a child of a foreign father, born in a foreign country, or in the United Kingdom before the naturalization of his father. At common law aliens were subject to very many disqualifications, the nature of which will appear from the 7 & 8 Vict. c. 66, which greatly relaxed the law in their favour. It provided, *inter alia*, that every person born of a British mother should be capable of holding real or personal estate; that alien friends might hold every species of personal property, except chattels real; that subjects of a friendly power might hold lands, etc., for the purposes of residence or business for a term of years not exceeding twenty-one years; and it also provided for aliens becoming naturalized. This act has (along with many others) been repealed by The Naturalization Act, 1870 (33 & 34 Vict. c. 14), which enacts (subject to certain provisoes) that real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject, and that a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject. The act also enables naturalized aliens to divest themselves of their status in certain cases, and enables British-born subjects to resign

their claim to be regarded as such. The act also, while it enables British subjects to renounce allegiance to Her Majesty, provides for their re-admission to British nationality, and contains enactments with respect to the national status of women and children. An alien is no longer entitled to be tried by a jury *de medietate linguæ* (s. 5). An alien is disqualified both for the parliamentary and municipal franchise, and also, by 12 & 13 Wm. III. c. 2, for being a member of either house of parliament, or of the Privy Council.

The registration of aliens as they arrive in this country is provided for by 6 & 7 Wm. IV. c. 11, by which masters of vessels arriving from foreign ports are required to declare that aliens are on board or have landed from their vessels, and the aliens themselves to declare their names and to what country they belong. This Act has been recently put in force with great strictness in consequence of an apprehended immigration of aliens without means of support and therefore likely to become a burden on the poor rates.

Alien Act, 33 Geo. III. c. 4, a temporary act passed in 1793, whereby any particular alien might be ordered by Royal Proclamation to depart the realm, or might be forcibly expelled. A similar, though not so stringent, temporary statute, 11 & 12 Vict. c. 20, was passed in 1848, and revived for a period of 3 years by the Prevention of Crime (Ireland) Act, 1882, 45 & 46 Vict. c. 25, s. 15.

Alien ami, or **amy,** a subject of a nation which is at peace with this country.

Alien enemy, a subject of a nation which is at war with this country.

Alien nee, a man born an alien.

Alienage, the state of an alien.

Alienate, or **Aliene,** to transfer property.

Alienation, a transferring property to another.—*Co. Litt.* 118.

Alienigena est alidnæ gentis seu alienæ ligeantiæ qui etiam dicitur peregrinus, alienus, exoticus, extraneus, etc. 7 Co. 16.—(An alien is of another nation or another allegiance, who is also called a stranger, foreigner, etc.)

Alienatio, i.e., alienum facere; vel, ex nostro dominio in alienum transferre; sive, rem aliquam in dominium alterius transferre. Co. Litt. 118.—(Alienation, that is, to make alien, or to transfer from one ownership to that of another, or to transfer anything into the power of another.)

Alienatio licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri, et quilibet potest renunciare juri pro se introducto. Co. Litt. 98.—(Although alienation be prohibited, yet, by the consent of all in whose favour it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favour.)

Alienatio rei præfertur juri accrescendi. Co. Litt. 185.—(Alienation is favoured by the law rather than accumulation.)

Alienation office, a place to which all writs of covenants and entries were carried for the recovery of fines levied thereon.

Alienee, one to whom a transfer of property is made.

Alieni juris, under another's authority.

Alienor, one who transfers property.

Aliment [fr. *alimentum,* Lat.], a fund for maintenance,—alimony.—*Scotch Term.*

Alimentorum appellatione venit victus, vestitus, et habitatio. 2 Inst. 17.—(Under the expression of *aliments* come food, clothes, and lodging.)

Alimony [fr. *alimonia,* Lat.], the allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit or at its termination, when she proves herself entitled to a separate maintenance, and the fact of a marriage is established. But she is not entitled to it if she elope with an adulterer, or wilfully leave her husband without any just cause for so doing.

It is of two kinds; (a) *In causes between husband and wife.* The husband is obliged to allow his wife alimony during the suit, and this whether the suit be commenced by or against him, and whatever its nature may be. It is usually about one-fifth of the husband's net annual income, and will be reduced according to fluctuations of income. The wife may apply for an increase if his means have improved. (b) *Permanent alimony,* which is allotted to a wife after final decree. Alimony is within the exclusive jurisdiction of the Court for Divorce and Matrimonial Causes. The Court may direct its payment either to the wife herself or to any trustee on her behalf. With regard to permanent provision for a wife, after a decree dissolving the marriage has been pronounced, the 20 & 21 Vict. c. 85, s. 32, enacts that the Court may, on a decree for dissolving marriage, order the husband to secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall seem reasonable. See *Browne on Divorce.*

A l'impossible nul n'est ténu.—(There is not any obligation to the impossible.)

Alio intuitu, with a collateral motive, a motive other than the proper and professed

one: e.g., when a man brings an action by way of advertising his goods or his character.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur. Co. Litt. 197.—(Something is conceded, which otherwise would not be conceded, lest an injury should remain unpunished.)

Aliquis non debet esse judex in propriâ causâ, quia non potest esse judex et pars. Co. Litt. 141 *a*.—(A person ought not to be judge in his own cause, because he cannot act as judge and party.)—See *Dimes* v. *Grand Junction Railway Company*, 3 *H. L. C.* 759, where it was decided that the possession, by a judge, of shares in a joint-stock company, party to a suit in which their interest was involved, was a disqualification.

Aliter (*otherwise*).

Aliter puniuntur ex isdem factionibus servi, quam liberi; et aliter qui quidem aliquid in dominum, parentemve commiserit, quam in extraneum; in magistrum, quam in privatum. 3 Inst. 220.—(Slaves and freemen are punished differently for the same offences; he who has committed an offence against a master or parent is punished otherwise than if he had committed it against a stranger; against a magistrate than if against a private person.)

Aliud actum aliud simulatum.—(The pretence was different from the reality.)

Aliud est celare, aliud tacere.—(To conceal is one thing, to be silent another.)

Aliud est possidere, aliud esse in possessione. Hob. 103.—(It is one thing to possess, it is another to be in possession.)

Aliunde, from another place or person.

Alkali works. The acts regulating alkali works, 26 & 27 Vict. c. 120,—a temporary act, made perpetual by 31 & 32 Vict. c. 36,—and 37 & 38 Vict. c. 43, are consolidated and amended by the Alkali, etc., Works Regulation Act, 1881, 44 & 45 Vict. c. 37, s. 29 of which defines 'alkali work' as 'every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved.'

Allaunds [fr. *alanis, Scythiæ gente*, Lat.], hare-hounds.—*Cowel.*

Allay, or **Alloy** [fr. *lex*, Lat.; *lega*, It.; *loi, alloi*, Fr., law or rule], the mixture of base metals with silver or gold, to increase the weight, in order to defray the charge of coinage, and to make it more fusile to cast. A pound weight of gold, by the present mint standard, is twenty-two carats fine and two carats allay. A carat weighs four grains. A pound of silver consists of eleven ounces two pennyweights of fine silver, and eighteen pennyweights of allay.—*Lowndes's Essay on Coins*, 19. From signifying the proportion of base metal, the term *alloy* was applied to the base metal itself.—*Wedgw.*

Allegans contraria non est audiendus. Jenk. Cent. 16.—(A person making contradictory allegations is not to be heard.)

Allegans suam turpitudinem non est audiendus. 4 Inst. 279.—(A person alleging his own infamy is not to be heard.)

Allegari non debuit quod probatum non relevat. 1 Chan. Ca. 45.—(That which, if proved, would not be relevant, ought not to be alleged.)

Allegata, a word anciently subscribed at the bottom of rescripts and constitutions of the Roman emperors, as *signata* or *testata* under other instruments.—*Encyc. Lond.*

Allegata et probata, assertions and facts.

Allegation [fr. *alleguer*, Fr.; *legare, allegare*, Lat., to depute], an asserted fact; the adduction of reasons or witnesses in support of an argument.

Allegation of faculties, the statement of a person's means. A term formerly used in the Ecclesiastical Courts in proceedings for alimony.

Allegiance [fr. *ligo*, Lat.], the natural, lawful, and faithful obedience which every subject owes to the supreme magistrate who oversteps not his prerogatives. It is either natural or perpetual, where one is a subject born, or has been naturalized, or local and temporary, where one is merely a resident in the British dominions.—1 *Inst.* 129 *a*. It is also either *implied*, so soon as the relationship of sovereign and subject is created; or *express*, which is the formal declaration of it.

Allegiance, Oath of. A new form of this oath was substituted for the older form by 21 & 22 Vict. c. 48. A new form was again provided by the 30 & 31 Vict. c. 75, s. 5, and this has in its turn been superseded by the Promissory Oaths Act (31 & 32 Vict. c. 72), by which a new and shorter form is provided.

Allegiare, to defend or justify by due course of law.—*Spel.*

Aller, superlatively, as *aller good* is the greatest good.—*Blount.*

Aller san jour, to go without day, i.e., to be finally dismissed from the Court, because there is no further day assigned for appearance.—*Kitch.* 146.

Alleviare, to levy or pay an accustomed fine.—*Cowel.*

All fours, a case agreeing in all its circumstances with another case is sometimes said to be *on all fours* with it.

Alliance [fr. *alleanga*, It.; *alianca*, Sp.; *alliance*, or *allier*, Fr.; *alligo*, Lat., to tie or unite together], the state of connection

with another by confederacy; a league. In this sense our histories mention the Grand Alliance, the Holy Alliance, and others. Also relation by marriage; relation by any form of kindred. The forms and ceremonies of alliance have been various in different ages and countries.—Consult *Encyc. Lond.*

Allision, the running of one vessel against another. See COLLISION.

Allocation, an allowance made upon accounts in the Exchequer, or rather a placing or adding to a thing.—*Encyc. Lond.*

Allocatione facienda, a writ allowing to an accountant such sums of money as he has lawfully expended in his office; it is addressed to the Lord Treasurer and the Barons of the Exchequer.—*Reg. Orig.* 206.

Allocato comitatu, in proceedings in outlawry, when there were but two County Courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special *exigi facias*, with an *allocato-comitatu*, issued to the sheriff in order to complete the proceedings. See *Bac. Abr.* OUTLAWRY.

Allocatur (*it is allowed*), the certificate of the allowance of costs by the master on taxation.—*Jacob.*

Allocatur exigent, a writ which is issued when an outlaw has not been exacted five times under the *exigi facias*, in order to complete the number of exactions.

Allodarii, tenants having as great an estate as subjects can enjoy.

Allodial. See ALODIAL.

Allograph, a document not written by any of the parties thereto; opposed to autograph.

Allonge. If there be not room on the back of a bill of exchange to write all the indorsements, the supernumerary indorsements may be written on a slip of paper annexed to the bill and called an *allonge*, and are then 'deemed to be written on the bill itself.' Bills of Exchange Act, 1882, s. 32, sub. 1. It requires no additional stamp.

Allotment, partition, the distribution of land under an enclosure act, or shares in a public undertaking. See JOINT STOCK COMPANY.

Allotments. Many acts (see *Chit. Stat.*, vol. v., tit. '*Poor* (*Allotments*)') have been passed authorizing parish officers to let out to poor persons small quantities of parish land or land originally allotted under inclosure acts for the benefit of the poor, and the Allotments Extension Act, 1882, 45 & 46 Vict. c. 80, imposes on trustees of lands vested in them for the benefit of the poor, 'and whereof the rents are distributed in gifts' of money, fuel, clothing, bread, etc., to take proceedings for letting such lands, 'in allotments, to cottagers, labourers, and others,' with a preference to cottagers, etc., living in the parishes where the lands are situate.

The Allotments Act, 1887, 50 & 51 Vict. c. 48, takes a far wider range. It imposes upon sanitary authorities the duty of acquiring land for allotments for the 'labouring population' of their districts, if upon inquiry, which they are bound to institute upon a representation by any six resident registered parliamentary electors, they are of opinion that there is a demand for allotments for the labouring population, and that such allotments cannot be obtained at a reasonable rent and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same. The land is not to be acquired unless the rents from the allotments may be reasonably expected to recoup expenses. If not obtainable by agreement, it may be acquired compulsorily by provisional order and Bill in Parliament. By s. 7 the rents are to be fixed at an amount not less than such as may reasonably be expected to insure the sanitary authority from loss, and allotments are not to exceed one acre for each holder, and may not be sublet; the erection of any buildings except toolhouses, sheds, greenhouses, fowlhouses, or pigsties is prohibited; and the tenant may remove fruit trees, etc., of his own planting, unless he have a claim for compensation. The Allotments Act, 1890, 53 & 54 Vict. c. 65, gives an appeal from sanitary authorities neglecting to provide allotments to the County Councils of their respective counties, and creates standing committees of County Councils for the purposes of the two Acts. The Allotments Rating Exemption Act, 1891, exempts allotments from rating for sanitary purposes, at a higher rate than other cultivated land.

'The Allotments and Cottage Gardens Compensation for Crops Act, 1887,' 50 & 51 Vict. c. 26, gives the holder of *any* allotment (which term is defined by s. 4 to mean 'any parcel of land of not more than two acres held by a tenant under a landlord and cultivated as a garden, or as a farm, or partly as a garden and partly as a farm) the right at the determination of his tenancy, and notwithstanding any agreement to the contrary, to obtain compensation from the landlord for crops, including fruit, for labour and manure applied in expectation of a future crop, and

for fruit trees planted, and drains and outbuildings, pigsties, fowlhouses, and other structural improvements made with the written consent of the landlord. A simple mode of determining the amount of disputed compensation by an (if possible unpaid) arbitrator is provided, and no claim is to be made under the Agricultural Holdings Act, 1883, for any matter in respect of which a claim is made under the act of 1887. The Tenant's Compensation Act, 1890, (see that title) gives the tenants of the allotments protection against the mortgagees of their landlords.

Allottee, a person to whom land under an inclosure act or shares in a public undertaking are allotted. See JOINT STOCK COMPANY.

Allowance [fr. *locare*, Lat.; *allocare allogare*, It.; *alogar*, Prov.; *louer*, *allouer*, Fr., to place or assign], a deduction, an average payment, a portion.

Also in selling goods, or in paying duties upon them, certain deductions are made from their weights, depending on the nature of the packages in which they are enclosed, and which are regulated in most instances by the custom of merchants, and the rules laid down by public offices. These allowances, as they are termed, are distinguished by the epithets, *draft*, *tare*, *tret*, and *cloff*.

Draft is a deduction from the original or gross weight of goods, and is subtracted before the tare is taken off.

Tare is an allowance for the weight of the bag, box, cask, or other package, in which goods are weighed.

Real, or *open tare*, is the actual weight of the package.

Customary tare is, as its name implies, an established allowance for the weight of the package.

Computed tare is an estimated allowance agreed upon at the time.

Average tare is when a few packages only among several are weighed, their mean or average taken, and the rest tared accordingly.

Super-tare is an additional allowance or tare where the commodity or package exceeds a certain weight.

The remainder, after the allowance of tare, is called the suttle weight; but if tret be allowed, the remainder is called the net weight.

Tret is a deduction of 4 lb. from every 104 lb. of suttle weight. This allowance, which is said to be for dust or sand, or for the waste or wear of the commodity, was formerly made on most foreign articles sold by the pound avoirdupois; but it is now nearly discontinued by merchants, or else allowed in the price. It is wholly abolished at the East India warehouses in London, and neither tret nor draft is allowed at the Custom-house.

Cloff or *Clough*, is another allowance that is nearly obsolete. It is stated in arithmetical books to be a deduction of 2 lb. from every 3 cwt. of the *second suttle*, that is, the remainder after tret is subtracted; but merchants, at present, know cloff only as a small deduction, like draft, from the original weight, and this only in the case of two or three articles. See *Kelley's Cambist*, art. '*London*,' and *McCull. Comm. Dict.*

Alloy. See ALLAY.

Alltud [*all-tud*, other land], a person either from foreign parts or from another part of the island, in villenage under the king or freeholder.—*Anc. Inst. Wales.*

Alluminor, one who anciently illuminated, coloured, or painted upon paper or parchment, particularly the initial letters of charters and deeds. The word is used in the 1 Rich. III. c. 9.

Alluvion, or **Alluvio** [fr. *alluo*, Lat.], land imperceptibly gained from the sea or the river by the washing up of sand and soil, so as to form *terra firma*.—2 *Bl. Com.* 261; *Res. Cotidianæ Dig.* 40, tit. 1, s. 7. See ACCRETION.

Ally. See ALLIANCE.

Almanack [fr. the Arabic particle *al*, and *manach*, to count or reckon], a publication, in which is recounted the days of the week, month, and year, both common and particular, distinguishing the fasts, feasts, terms, etc., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, etc. It is part of the law of England, of which the Courts must take notice in the returns of writs, etc., but the almanack to go by is that annexed to the Book of Common Prayer. It is not evidence of the time of sunrise on a particular day.—*Tutton* v. *Darke*, 5 *H. & N.* 647.

Almaria, the archives or muniments of a church or library.—*Blount.*

Almner, or **Almoner**, an officer of the royal household, whose business it is to distribute the royal alms. The lord almoner, who is usually now a bishop, had the disposition of the sovereign's dish of meat, after it came from the table, which he might give to whom he pleased. The Marquis of Exeter is hereditary Grand Almoner.—*Fleta*, lib. ii. c. 22; *Co. Litt.* 94 *a.*

Almodraii, the lords of free manors, lords paramount.—*Old Records.*

Almoin, a tenure of lands by divine service. See FRANKALMOIGNE.

Almonarium, a kind of safe or cupboard in which broken victuals were laid up to be distributed among the poor.—*Old Records.*

Almonarius [corruption of *eleemosynarius*], a distributer of alms.

Almsfeoh, or **Almesfeoh** [Sax.], alms-money. It has been taken for *Peter-pence*, first given to the Pope by Ina, King of the West Saxons, and anciently paid in England on the first of August. It was likewise called *romefeoh*, *romescot*, and *heorthpening*. —*Selden's Hist. Tithes*, 217.

Almutium, a cap made of goats' or lambs' skin, the part covering the head being square, and the other part hanging behind to cover the neck and shoulders; worn by priests.—*Monast.*, tom. iii., 36.

Alnage, or **Aulnage** [fr. *aune*, Fr., an ell], a measure, particularly the measuring with an ell.—*Cowel.*

Alnager, or **Aulnager**, formerly a public sworn officer of the king, who examined into the assize of cloth, and fixed seals to it, and also collected a subsidiary or *aulnage* duty on all cloths sold (25 Edw. III. st. 4, c. 1). There were afterwards three officers belonging to the regulation of clothing, viz., searcher, measurer, and aulnager.—4 *Inst.* 31. Alnage duties were abolished in England by 11 & 12 Wm. III. c. 20, and in Ireland by 57 Geo. III. c. 109.

Alnet, De, D'Auney.

Alnetum, a place where alders grow, or a grove of alder trees.—*Domesday Book; Co. Litt.* 4 *b.*

Alodial, or **Allodial**, or **Allodium** [perhaps fr. *odal*, Icel.; *odel*, Dan. Sw., a patrimonial estate. See *Wedgw.*], a holding of lands in absolute possession without acknowledging any superior lord, contradistinguished from *Feudal* lands, which are held of superiors.—*Cowel.* There are not any alodial lands in England, according to Coke.—*Co. Litt.* 93 *a*; 1 *Hall. Mid. Ages*, ch. 2, pt. i., p. 147.

Alodium. See ALODIAL.

Alody, inheritable land.

Aloverium, a purse.—*Fleta, l.* ii. c. 82, p. 2.

Alsatia, formerly a cant name for Whitefriars, a district in London, between the Thames and Fleet Street, and adjoining the Temple, which, possessing certain privileges of sanctuary, became for that reason a nest of those mischievous characters who were generally obnoxious to the law. These privileges were derived from its having been an establishment of the Carmelites, or White Friars, founded in 1241. In the time of the Reformation the place retained its immunities as a sanctuary, and James I. confirmed and added to them by a charter in 1608, but all privileges of sanctuary were shortly afterwards abolished by 21 Jac. I. c. 28.

Alta, De, *ripa*, Dantry.

Alta proditio, high treason; now simply called treason.

Altarage, offering made upon the altar; the profit arising to the priest by reason of the altar.—*Termes de la Ley*, 39.

Alteration. An alteration vitiates a deed or other instrument, if made in a material part after execution. In the case of deeds, an unexplained alteration is presumed to have been made at the time of execution; but it is otherwise in the case of wills. See 7 Wm. IV. & 1 Vict. c. 26, s. 21.

Alterius circumventio alii non præbet actionem.—(The deceiving of one person does not afford an action to another.)—*D.* 50, 17, 49.

Alternat, a usage amongst diplomatists by which the rank and places of different powers, who have the same rights and pretensions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In preparing treaties and conventions, it is the usage of certain powers to alternate both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place.—*Wheat. Int. Law*, pt. ii., c. 3, s. 4.

Alternativa petitio non est audienda. 5 Co. 40.—(An alternative petition is not to be heard.)

Alternative, the one or the other of two thing. Where a new remedy is created in addition to an existing one, they are called alternative if only one can be enforced; but, if both, *cumulative.*

Altius non tollendi, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height.—*Dig.* 8, 2, 4; *Sand. Just.*, 7th ed., 120.

Altius tollendi, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title.—*Civil Law; Sand. Just.*, 7th ed., 120.

Alto et basso (*high and low*), an absolute submission of all differences.—*Blount.*

Altum mare (*the high sea*).

Alumnus, a child which one has nursed; a foster-child.—*Dig.* 40, 2, 14; *Civil Law.* One educated at a college or seminary is called an *alumnus* thereof.

Amabyr, or **Amvabyr**, a custom in the honour of Clun, belonging to the Earls of Arundel.—*Pretium virginitatis domino solvendum.* Abolished.—*Cowel.*

Amalphitan Code, a collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi. It consists of the laws of maritime subjects which were or had been in force in countries bordering on the Mediterranean, and was for a long time received as authority in those countries.

Amanuensis [*a manu*, Lat.], one who writes on behalf of another that which he dictates.

Ambactus, a servant or client.—*Cowel.*

Ambassador [*legatus*, Lat.], a representative minister sent by one sovereign power to another, with authority conferred on him by letters of credence, to treat on affairs of state. —4 *Inst.* 153. Ambassadors are either *ordinary*, who reside in the place whither they are sent; or, *extraordinary*, who are employed upon special matters. The person of an ambassador is protected from civil arrest and his goods from seizure under distress or execution by 7 Anne c. 12. Consult *Bac. Abr.* '*Ambassador*,' or *Com. Dig.*—This is the highest rank and designation of diplomatic officials. Sovereigns are represented also by ministers at foreign courts, under the name of envoy, minister, *chargè d'affaires*, or consuls, and the functions of all these are the same as an ambassador, the only difference being in dignity.

Ambassy, an embassy.

Amber, or **Ambra**, a measure of four bushels.—*Introd. Domesd.*, Vol. I., 133.

Ambidexter, one who plays on both sides. A juror or embraceror, who takes bribes from both parties to influence his verdict.—*Termes de la Ley*, 38.

Ambigua responsio contra proferentem est accipienda. 10 Co. 59.—(An ambiguous answer is to be taken against him who offers it.)

Ambiguis casibus semper præsumitur pro rege.—(In doubtful cases the presumption is always in favour of the king.)—*Lofft.* 248.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. Bacon.—(A hidden ambiguity of the words may be supplied by evidence; for whatever ambiguity arises from an extrinsic fact may be removed by extrinsic evidence.) See AMBIGUITY.

Ambiguitas verborum patens nullâ verificatione excluditur. *Lofft.* 249.—(A patent ambiguity cannot be cleared up by extrinsic evidence.) See AMBIGUITY.

Ambiguity, doubtfulness, double-meaning, obscurity. There are two species of ambiguity (see the above maxims), viz., that which is apparent on the face of an instrument, and which cannot be rendered certain by the evidence of collateral facts and surrounding circumstances admissible under the rules of construction; this is called *ambiguitas patens*; and that which, although apparently certain, and without ambiguity, for anything that appears upon the face of the deed or instrument, is rendered ambiguous by extrinsic and collateral matter out of the deed; this is called *ambiguitas latens*. The former ambiguity cannot be explained by parol evidence, because the law will not couple and mingle matter of speciality, which is of the higher account, with matter of averment, which is of inferior account in law; but the latter can be explained by the actions of the parties previously to and contemporaneously with the contract. Ambiguity of language is, however, to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous, unless their signification seem doubtful and uncertain to persons of competent skill and knowledge to understand them.—*Story on Contracts*, 272; *Taylor* or *Best on Evidence.*

Ambiguum placitum interpretari debet contra proferentem. Co. Litt. 303 *b.*—(An ambiguous plea ought to be interpreted against the party delivering it.)

Ambit [*metaph.*], the limits or circumference of a power or jurisdiction, the line circumscribing any subject matter.

Amboglanna, Ambleside in Westmoreland, and Burdoswold in Cumberland.

Ambra, a Saxon vessel or measure for salt, butter, meal, or beer. See AMBER.

Ambrosii Burgus, Amesbury in Wilts.

Ambulatoria est voluntas, defuncti usque ad vitæ supremum exitum. Dig. 34, 4, 4.—(The will of a deceased person is ambulatory until the latest moment of life.)

Amenable [fr. *amener*, Fr., to lead unto], tractable, that may be easily led or governed; formerly applied (see *Cowel*) to a wife who is governable by her husband.

2. Responsible or subject to answer, etc., in a court of justice.—*Cowel.*

Amende honorable [Fr.], an adequate reparation, an apology. In French law a species of punishment to which offenders against public decency or morality were anciently condemned.

Amendment, a correction of any errors in the pleadings in actions, suits, or prosecutions. The power of amendment has been much extended by modern statutes, but it is never exercised to the prejudice of a party to the proceeding.

1. Amendment of proceedings in the Supreme Court. By R. S. C. 1883, the Court or a judge may, at any stage of the proceedings, allow either party to alter his

statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or may tend to prejudice or delay the fair trial of the action, and all such amendments are to be made as may be necessary for the purpose of determining the real questions in controversy between the parties (r. 1).

2. Of Proceedings in County Courts. Ample powers of amendment, as well in equitable as in all other proceedings, are possessed by these Courts. See the County Court Rules.

3. Of Criminal Proceedings. By 11 & 12 Vict. c. 46, s. 4, 12 & 13 Vict. c. 45, s. 10, and 14 & 15 Vict. c. 100, ss. 1 & 2, indictments and informations may be amended at the trial where a variance appears between the same and the evidence. Provision is made by 12 & 13 Vict. c. 45, ss. 3, 7, and 9, for amendment in appeals at Quarter Sessions.

Amends, satisfaction.

Amends, Tender of, is by particular statutes made a defence in an action for a wrong. See 11 Geo. II. c. 19, ss. 20, 21, as to distresses; 11 & 12 Vict. c. 44, s. 11, as to Justices of the Peace; 10 Geo. IV. c. 44, s. 41, as to Metropolitan Police Constables; 5 & 6 Wm. IV. c. 50, s. 109, as to persons acting in pursuance of the Highway Act; and 24 & 25 Vict. c. 96, s. 113; 24 & 25 Vict. c. 97, s. 71; and 24 & 25 Vict. c. 99, s. 33, as to persons acting in pursuance of the statutes relating to larceny, malicious injuries to property, and offences relating to the coin.

A mensa et thoro (*from table and bed*). A term used to describe a partial divorce, in cases in which the marriage was just and lawful, but for some supervenient cause, such as the commission of adultery or cruelty by the husband or wife, it became improper or impossible for them to live together. This divorce was effected by sentence of the Ecclesiastical Court. It caused the separation of the husband and wife, but did not dissolve the marriage, so that neither of them could marry during the life of the other.

A decree of *Judicial Separation* by the Court for Divorce and Matrimonial Causes has been substituted for this kind of divorce by 20 & 21 Vict. c. 85, s. 7.

Amentia, insanity, idiotcy.

Amercement, or **Amerciament**, a pecuniary punishment or penalty assessed by the peers or equals of the party, amerced for an offence, by the commission of which he had placed himself at the mercy of the lord. The difference between *amercements* and *fines* is as follows: The latter are certain, and are created by some statute; they can only be imposed and assessed by Courts of record; the former are arbitrarily imposed by Courts not of record, as courts-leet.—*Termes de la Ley*, 40.

Amhiniogau tir (*land borderers*), witnesses in a Court in suits respecting landed property, whose lands bordered on that in dispute.—*Anc. Inst. Wales.*

Ami. See AMY.

Amicia, a cap made of goat's or lamb's skin. See ALMUTIUM.

Amictus, or **Amesse**, the uppermost of the six garments worn by priests. It is tied round the neck, and covers the breast and heart. The other five garments are alba, cingulum, stola, manipulus, and planeta.—*Cowel.*

Amicus curiæ (Lat., *friend of the Court*), a member of the bar or other stander by, who informs the Court when doubtful or mistaken of any fact or decided case.—2 *Co. Litt.* 178.

Amita, a paternal aunt; the sister of one's father.

Amita magna, a great-aunt.

Amittere legem terræ, or **liberam legem**, to lose the liberty of being sworn in any Court. But by 6 & 7 Vict. c. 85, persons who were previously excluded from giving evidence by incapacity arising from crime or interest, are made competent witnesses, their credibility being left to the jury. A person outlawed is said to lose his law; i.e., to be put without its protection, so that he cannot sue, although he may be sued.—*Glanvil*, lib. ii.

Ammobragium, a service, or poll-money, like chevage.— *Spel.*

Ammodwr [*am-bod-wr*], a compactor, one before whom a compact is made, and who is therefore admissible as a witness to prove the terms of it.—*Anc. Inst. Wales.*

Amnery, an almshouse.

Amnesty [fr. ἀμνηστία, Gk., non-remembrance], an act of pardon or 'oblivion,' by which crimes against the government up to a certain date are so obliterated that they can never be brought into charge. All acts of amnesty originate with the Crown.

Amnitum insulæ, isles upon the west coast of Britain.—*Blount.*

Amobh [fr. *am-gobr*, fee], the fee paid to a lord on the marriage of a female.—*Anc. Inst. Wales.*

Amortization, or **Amortizement**, an alienation of lands in mortmain.

Amortize, to alienate lands in mortmain.

Amotion, a putting away, a removing, deprivation or ouster of possession.—*Scott.* In boroughs, a removal from a corporate office.

Amove, to remove from a post or station.

Amoveas manus, or **Ouster le main**, a livery of land to be amoved out of the king's hands on a judgment obtained upon a *monstrans de droit*, to restore the land, its effect being the same as a judgment that the party should have his land again. Abolished by 12 Car. II. c. 24.

Ampliation, an enlargement, a deferring of judgment till the cause be further examined. —*Cowel.*

Amputation of right hand, an ancient punishment for a blow given in a Superior Court; or for assaulting a judge sitting in the Court.

Amrygoll [*am-rhy-coll*, total loss], loss of property.—*Anc. Inst. Wales.*

Amy, or **Ami** [fr. *amicus*, Lat.], usually called *prochein amy*, the next friend (as distinguished from the guardian), suing on behalf of an infant or orphan. Infants sue by *prochein amy* or guardian, and defend by guardian.—*Cowel.*

An, jour, et waste, year, day, and waste. A forfeiture of the lands to the Crown incurred by the felony of the tenant, after which time the land escheats to the lord.—*Termes de la Ley*, 40.

Anacoenosis [fr. ἀνακοινώσις, Gk.], a rhetorical figure, whereby we seem to deliberate and argue the case with others upon any matter of moment.—*Encyc. Lond.*

Anacoluthon, or **Anacbluthus** [fr. ἀκόλουθος, Gk.], a rhetorical figure, when a word that is to answer another is not expressed.—*Ibid.*

Anacrisis [fr. ἀνάκρισις, Gk.], an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.—*Ibid.; Civ. Law.*

Anagraph, a register or inventory.

Analogism, an argument from the cause to the effect.

Analogy; identity or similarity of proportion: where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases in a different subject-matter but governed by the same general principle. This is reasoning by analogy. See COMMON LAW, and remarks of Parke, J., in *Mirehouse* v. *Rennell*, 8 *Bing.* 515.

Analysis, persons skilled in detecting the component parts of things. By the Adulteration Act, 1875 (see ADULTERATION), provision is made for the appointment in every district by the local authorities of one or more persons possessing competent medical, chemical, and microscopical knowledge as *analysts* of all articles of food and drink.

Anarchy [fr. ἀναρχία, Gk., absence of government], that state of commotion that arises when a government has lost its power.

Anathematize, to pronounce accursed by ecclesiastical authority, to excommunicate.—*Encyc. Lond.*

Anatocism [fr. ἀνά and τοκος, Gk.], taking compound interest for the loan of money.

Anatomy Act, 2 & 3 Wm. c. 75, by which the practice af dissecting human corpses is regulated, and a license required for it.

Ancestor, one that has gone before in a family; it differs from predecessor, in that it is applied to a natural person, and his progenitors, while the latter is applied also to a corporation, and those who have held offices before those who now fill them.—*Co. Litt.* 78*b*.

Ancestral, or **Ancestrel**, that which has relation to ancestors.—*Blount.*

Anchor. See ANKER.

Anchorage, a duty taken from the owners of ships for the use of the havens where they cast anchor.

Anchors Proof Act, 27 & 28 Vict. c. 27; amended by 37 & 38 Vict. c. 51.

Ancient demesne, a tenure existing in certain manors, which, though now granted to private persons, were in the actual possession of the Crown, in the times of Edward the Confessor and William the Conqueror, and appear to have been so by the great survey in the Exchequer called Domesday-Book, and, therefore, whether lands are ancient demesne or not, is to be tried only by this book, called in consequence *Liber Judicatorius;* but the question must be tried by a jury whether lands be parcel of a manor, which is ancient demesne, being a question of fact. It is a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor. There are three sorts, (1) where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure.—Consult *Scriven on Copyholds*, and 2 *Br. & Had. Com.* 200.

Ancient lights, the enjoyment of light for twenty years and upwards.—Consult *Goddard on Easements*, and the Prescription Act, 2 & 3 Wm. IV. c. 71.

Ancients, gentlemen of the Inns of Court and Chancery. In Gray's Inn the Society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed ancients. The Inns of Chancery consisted of ancients and students

or clerks; from the ancients a principal or treasurer was chosen yearly.

Ancient Serjeant, the eldest of the Queen's Serjeants.—See *Manning's Serviens ad legem,* 19—20.

Ancient writings, documents upwards of thirty years old. These are presumed to be genuine without express proof, when coming from the proper custody.—Consult *Taylor on Evidence.*

Ancienty, eldership or seniority.

Ancillary [fr. *ancilla,* Lat.], that which depends on, or is subordinate to, some other decision.—*Encyc. Lond.*

Ancwyn, a stated allowance of provision allotted to the officers of the court in their lodgings; the term appears to be put in opposition to *cwynos* (*cœna*), supper, as being a privileged *private* allowance for that meal; the *cwynos* being the *public* evening meal. *Ancywn* is translated *cœna* in some Latin copies of the ancient Welsh laws.—*Anc. Inst. Wales.*

Andaga, or **Andæg,** a day or term appointed for hearing a cause; hence *Andagian,* to appoint the day.—*Anc. Inst. England.*

Andena, a swath or line of grass or corn in mowing, or as much ground as a man can stride over at once.—*Jacob.*

Anderida, Newenden in Kent.

Andreapolis, St. Andrews in Scotland.

Androgynus [fr. ἀνήρ, ανδρός, Gk., man, and γυνη, woman], a hermaphrodite.

Androlepsy, the taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former.

Anfeldtyhde, or **Anfealtihle,** a simple accusation.—*Saxon.*

Angaria [fr. ἀγγαρεία, Gk.], personal service, which tenants were obliged to pay to their lords. Impressing of ships.—*Blount.*

Angel, an ancient English coin of the value of ten shillings.—*Jacob.*

Angelica, vestis, a monkish garment which laymen put on a little before death, in order to have the benefit of the monks' prayers.—*Monast.,* tom. i. 632.

Anghyvarch [fr. *an, cyvarch,* unquestionable], a term used for the articles which were exclusively the property of a man or woman, and not subject to a division upon a separation ensuing. A fine for committing certain actions without permission.—*Anc. Inst. Wales.*

Angidllarianum, monasterium, the city of Ely in Cambridgeshire.

Angild [fr. *an,* one, and *gild,* payment, mulct, or fine, Sax.], the single valuation or compensation of a criminal. *Twigild* was the double, and *trigild* the treble, mulct or fine. —*Laws of Ina,* c. 20; *Spelm.*

Angliæ jura in omni casu libertatis dant favorem. Fortesc. c. 42.—(The laws of England in every case of liberty are favourable.)

Anglo-Indian, an Englishman domiciled in the Indian territory of the Crown.

Anglo-Indian domicile. See last TITLE.

Angylde, the rate by law, at which certain injuries to person or property were to be paid for; in injuries to the person, equivalent to the 'wer,' i.e., the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceap-gild.*—*Anc. Hist. England.*

Anhlote, a single tribute or tax, paid according to the custom of the country as scot and lot.—*Leges Wm. I.* c. 64.

Anichiled, annulled, cancelled, or made void.—*Blount.*

Aniens, or **Anient,** void, of no force, or effect.—*F. N. B.* 214.

Animalia fera, si facta sint mansueta et ex consuetudine eunt et redeunt, volant et revolant, ut cervi, cygni, etc., eo usque nostra sunt, et ita intelliguntur quamdiu habuerunt animum revertendi. 7 Co. 16.—(Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, etc., are considered to belong to us so long as they have the intention of returning to us.)

Animals may be divided into—

(1) Domestic animals, or animals not naturally mischievous, such as dogs or oxen.

(2) Animals *mansuetæ naturæ,* such as sheep and cows.

(3) Animals that are naturally dangerous and ferocious, such as lions, bears, etc.

(4) Animals *feræ naturæ* (which are unreclaimed), such as hares, pheasants, partridges, etc. See FERÆ NATURÆ.

Any man may seize upon and keep for his own use animals *feræ naturæ.* So long as they remain in his custody he has a right to enjoy them without disturbance; but if once they escape from his custody, though without his voluntary abandonment, they return to the common stock, and any man has an equal right to seize and enjoy them afterwards.

An action will lie against the owners of a dog, or other animal known by him to be mischievous, for injuries done by it.

By 24 & 25 Vict. c. 97, s. 40, the unlawful and malicious killing, maiming, or wounding of cattle is made a felony. And by s. 41, the unlawful and malicious killing or wounding any animal not being cattle, but being the subject of larceny at Common Law, or being ordinarily kept in a state of confinement, or for any domestic purpose, is punishable by imprisonment and fine.

By 12 & 13 Vict. c. 92 (amended by 17 & 18 Vict. c. 60), any person cruelly ill-treating or torturing any horse, mare, etc., etc., or any other domestic animal, forfeits 5*l.* for every such offence, recoverable before a justice of the peace in a summary way; and if by such misconduct he injures the animal, or any person or property, a further sum of 10*l.* to the owner or person injured. The act also, which repeals 5 & 6 Wm. IV. c. 59 (Martin's Act), the first act passed for the purpose, imposes penalties for conveying such animals in such manner or position as to subject them to unnecessary pain or suffering, and for bull-baiting and cock-fighting. See also VIVISECTION.

The 24 & 25 Vict. c. 97, ss. 40-1, also provides for the punishment of persons unlawfully and maliciously killing, maiming, or wounding cattle, dogs, birds, beasts, and other animals. See also CONTAGIOUS DISEASES (ANIMALS).

Animus, an intent.

Animus ad se omne jus ducit.—(Intention attracts all law to itself.)

Animus cancellandi, the intention of destroying or cancelling (applied to wills).

Animus et factum, the intention and the deed.

Animus furandi, the intention of stealing.

Animus homines est anima scripti. 3 Bulst. 67.—(The intent of a man is the soul of his writing.)

Animus manendi, the intention of remaining (applied to domicile).

Animus morandi, the intention of remaining.

Animus quo, the intent with which.

Animus recipiendi, the intention of receiving.

Animus revertendi, the intention of returning.

Animus revocandi, the intention of revoking (viz., a will).

Animus testandi, the intention of making a will.

Anker, a measure containing ten gallons. —*Lex Merc.*

Ann, or **annat**, half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin, after his decease.—*Scotch Law.*

Anna, a piece of money, the sixteenth part of a rupee.—*Indian.*

Annales, yearlings or young cattle from one to two years old.—*Cowel.*

Annat, or **annates** [fr. *primitiæ*, Lat.], first fruits (being one year's whole profits) of a spiritual living.—*Termes de la Ley*, 40. See BOUNTY OF QUEEN ANNE.

Annealing of tile [fr. *onælan*, Sax.; *accendo*, Lat.; or rather fr. *niello*, It.; *nigellum*, m. Lat.; a kind of black enamel on gold and silver], burning or hardening tiles, which are made of burnt clay, and are used for covering houses.—17 *Edw. IV.* c. 4.

Annexation, the union of lands to the Crown, and declaring them inalienable. Also the appropriation of the church-lands by the Crown, and the union of land lying at a distance from the parish church to which they belong, to the church of another parish to which they are contiguous.—*Scotch Law.*

Anniented, abrogated, frustrated, or brought to nothing.—*Litt.* c. 3, s. 741.

Anni nubiles, marriageable years of woman, i.e., 12 years.—2 *Co. Litt.* 434.

Anniversary Days, solemn days appointed to be celebrated yearly in commemoration of the death of a saint or the happening of an event.

The death of Charles I., 30th January, the Restoration of Charles II., 29th May, and the discovery of the Gunpowder Plot, November 5th, gave rise to 'anniversaries' and special church services abolished by 22 Vict. c. 2. The anniversary of the 20th of June (accession of the Queen) is still observed.

Anno Domini (abbreviated A.D.), in the year of the Lord. The Christian computation of time is from the incarnation of our Saviour Jesus Christ. It is called the 'Vulgar Era.'

Annoisance, or **Annoyance** [fr. *annoiare*, It.; *ennuyer*, Fr.], any hurt done to a place, public or private, by placing anything thereon that may breed infection, or by encroachment, or suchlike means. It is the same as *noisance* or *nuisance*.—22 Hen. VIII. c. 5.

Annonæ civiles, rents paid to monasteries.

Annotation, the designation of a place of deportation; the citing of an absentee; the prince's answer on a doubtful point of law.—*Civil Law.*

Annua pensione, an ancient writ to provide the king's chaplain, if he had no preferment, with a pension.—*Reg. Orig.* 165, 307.

Annual pension, a yearly profit or rent.—*Scotch Law.*

Annuale, the yearly rent or income of a prebendary.—*Cowel.*

Annualia, a yearly stipend assigned to a priest for celebrating an anniversary, or for saying continued masses for the soul of a deceased person.—*Blount.*

Annuities of tiends, i.e., tithes, are 10*s.* out of the boll of tiend wheat, 8*s.* out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the Crown yearly of the tiends not paid to the bishops, or set apart for other pious uses.—*Scotch Law.*

Annuity (annual payment, usually, but not necessarily, determining with the life of the grantee, or after a limited period), properly so called, is merely personal property, and not at all connected with realty, although it is frequently ranged under incorporeal hereditaments, issuing out of land, and even the legislature treats it sometimes as a rent-charge, from which it materially differs.—3 & 4 *Wm. IV.* c. 27, s. 21. The words 'annuity' and 'rent charge' are frequently used as convertible terms.

A perpetual annuity, if it be charged upon real estate, is redeemable under the provisions of s. 45 of the Conveyancing Act, 1881.

An annuity for life or years is not redeemable in the same manner; but it may be agreed by the parties to the contract that it shall be redeemable on certain terms.

An annuity may be bequeathed. It may be either created by, or, if already existing, may be transmitted by will. A created annuity is a general legacy, and will abate with the other legacies upon a deficiency of assets. A personal annuity of inheritance will pass under a general bequest.—*Aubin* v. *Daly*, 4 *B. & A.* 59.

An annuity is frequently resorted to as a means of borrowing money, where the borrower has not any available security; the borrower undertaking to pay an annuity during his own life, instead of interest and the return of the loan. The borrower is the grantor, and the lender is the grantee, of such annuity.

Again, a person desirous of increasing his income, and having, perhaps, no relations for whom he wishes to provide, may sink the capital he possesses, and purchase an annuity for his life. While the Government offers the best and safest security for the due payment of a purchased annuity, joint-stock companies and private speculators hold out higher rates of interest, which, however, are not always preferable, seeing that certainty of payment is a grand desideratum.—See 10 Geo. IV. c. 24, 2 & 3 Wm. IV. c. 59, 1 & 2 Vict. c. 49, 16 & 17 Vict. c. 45, 27 & 28 Vict. c. 43, and 36 & 37 Vict. c. 44, s. 1, as to annuities granted by the Commissioners for the Reduction of the National Debt; and 3 & 4 Wm. IV. c. 14, 7 & 8 Vict. c. 83, ss. 8 & 9, 16 & 17 Vict. c. 45, 26 & 27 Vict. c. 87, and 45 & 46 Vict. c. 51, 'The Government Annuities Act, 1882,' as to the purchase of such annuities (not exceeding 100*l.* a year in amount) through Savings Banks.

While the 17 & 18 Vict. c. 90, wholly repealed from the 10th August, 1854, the 53 Geo. III. c. 141, except so much thereof as repealed the 17 Geo. III. c. 26, the 18 Vict. c. 15, after reciting that by reason of the repeal of this act, purchasers were no longer enabled to ascertain by search what life annuities or rent-charges may have been granted by their vendors or others, enacted by s. 12 that 'any annuity or rent-charge granted after 26th April, 1856, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives,' should not 'affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors,' unless and until a memorandum of all particulars should be left with the senior master of the Court of Common Pleas at Westminster, to be entered by him in a book in alphabetical order, which book should be open to public search.

The 14th section excepts annuities or rent-charges given by will from the act.

The arrears of an annuity charged on land are recoverable by distress and entry under s. 44 of the Conveyancing Act, 1881.

Annuity-tax, an impost levied annually in Scotland for the maintenance of the ministers of religion. It was abolished in Edinburgh and Montrose by 23 & 24 Vict. c. 50, which introduced a new scheme. By the 33 & 34 Vict. c. 87, this act has been amended and provision made for the more effectual abolition of the tax, and for the payment of the ministers otherwise.

Annulus et baculum, a ring and pastoral staff or crosier, the delivery of which by the prince was the ancient mode of granting investitures to bishoprics.—1 *Bl. Com.* 377.

Annus deliberandi, the year allowed by Scottish law for the heir to deliberate whether he will enter upon his ancestor's land and represent him. By 21 & 22 Vict. c. 76, s. 27, the period of deliberation was reduced to six months.—*Scotch Law.*

Annus, dies, et vastum [Lat.] (*Year, day, and waste*). See AN, JOUR, ET WASTE.

Annus luctus, the year of mourning, during which the widow, by the ordinances of the civil law, could not marry, to prevent the inconvenience of a widow bearing a child which, by the period of gestation, might be the child either of her deceased or her present husband.—*Cod.* 5, 9, 2.

Anomy [fr. ἀνομία, Gk.], lawlessness, breach of law.

A non posse ad non esse sequitur argumentum necessarie negativè licet non affirmativè. Hob. 336.—(An argument follows necessarily in the negative from the not possible to the not being, though not in the affirmative.)

Anon., An., A., abbreviation for anonymous.

Anonymous partnerships in Ireland. See 21 & 22 Geo. III. c. 46 (Irish).

Anrhaith [*anrhaith*, lawless], spoil.—*Anc. Inst. Wales.*

Anrhaith-gribddail, pilfering, spoliation. A term for the graver spoliation to be exercised towards a homicide.—*Ibid.*

Anrhaith-oddev, spoliation, sufferance. A term used when a person's goods were confiscated and seized by the lord.—*Ibid.*

Ansel, Ansul or **Auncel**, an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end, and the thing weighed at the other.—*Termes de la Ley*, 66.

Answer [fr. *andswarian*, A. S.; *andswer*, Goth.; *antwoord*, Belg.], reply, counter-speech.

Answer in Chancery. When a defendant was advised to take the judgment of the Court upon the whole case, or any part of it, as made by the parties on both sides, he used, under the former practice, to file an answer (for further details see *Daniell's Chancery Practice*) either to the whole bill or the parts not covered by a demurrer or plea, where a combined defence was resorted to.

By the Judicature Acts a 'Statement of Defence' is substituted for the 'Answer.'—See further STATEMENT OF DEFENCE.

Answer in Divorce. The case of a respondent and co-respondent in the Court for Divorce and Matrimonial Causes.

Answer to interrogatories. See INTERROGATORY.

Ante, occurring in a report or a text-book, is used to refer the reader to a previous part of the book.

Antedate, to date a document before the day of its execution.

Antejuramentum, or **Præjuramentum,** an oath taken by the accuser and accused before any trial or purgation.—*Leg. Athelstan apud Lambard*, 23.

Ante litem motam [Lat.], (*before litigation commenced*).

Antenati, those born before a certain period, e.g., before marriage. See SETTLEMENTS.

Ante-nuptial, before matrimony.

Antichresis [fr. ἀντίχρησις, Gk.], in the civil law, a covenant or convention, whereby a person borrowing money of another engages or makes over his lands or goods to the creditor, with the use and occupation thereof, for the interest of the money lent. This covenant was allowed by the Romans, among whom usury was prohibited; it was afterwards called MORT-*gage* to distinguish it from a simple engagement, where the fruits of the ground were not alienated, which was called VIF-*gage*, i.e., *vivum vadium.*—*Ibid.* The obsolete Welsh mortgage bears a resemblance to this kind of pledge.—1 *Domat*, b. iii. tit. I. s. i. art. 28; *Story on Bailments*, 310.

Anticipation, doing or taking a thing before the appointed time. Married women may be restrained by the terms of a will or settlement from aliening, by way of anticipation, property settled to their separate use during coverture. See *Pike* v. *Fitzgibbon*, 17 *Ch. D.* 455, and s. 19 of the Married Women's Property Act, 1882, post., tit. '*Married Women's Property.*' But the Conveyancing and Law of Property Act, 1881, s. 39, gives the Chancery Division of the High Court power to bind the interest of a married woman, notwithstanding that she is so restrained.

Antient demesne. See ANCIENT DEMESNE.

Antigraphy, a copy or counterpart of a deed.

Antigua. See 22 & 23 Vict. c. 13, and 13 & 14 Vict. c. 15, s. 1.

Anti-manifesto, the declaration of a belligerent, as a reply to the manifesto of the other belligerent, showing that the war, as far as he is concerned, is defensive.

Antinomy [fr. ἀντί, against, and νομός, Gk., law], a contradiction between two laws or two articles of the same law.—*Encyc. Lond.*

Antipelargia, an ancient and righteous law, whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork, is a bird famous for the care it takes of its parents, when grown old. Hence, in some Latin writers, this is rendered *lex ciconiaria*, or the stork's law.—*Ibid.*

Antiqua customa, a duty which was collected on wool, wool-felts, and leather.

Antiqua statuta, the acts of parliament from Richard I. to Edward III.

Antistitium, a monastery.—*Blount.*

Antithetarius, or **Anthetarius,** the recriminating upon the accuser of the same crime, which he has charged against the accused.—*Canutus*, c. 47.

Antivestæum, the Land's End.

Antona, the River Avon, in Warwickshire.

Antrustions, among the Franks, who were the personal vassals or dependents of the kings and counts.

Apatisatio, an agreement or compact.—*Du Cange.*

Apertura testamenti, a form of proving a

will in the Civil Law by the witnesses acknowledging before a magistrate their having sealed it.—1 *Wm. Exors*, 8th ed., 329.

Apiacum, Pap Castle, in Cumberland.

Apices juris non sunt jura. Co. Litt. 304. —(Fine points of law are not laws.) 'An excellent and profitable law, which disallows curious and nice exceptions tending to the overthrow or delay of justice.' See *Broom's Legal Max.*

Apograph, a copy, an inventory.

Apology. By 6 & 7 Vict. c. 96, s. 1, a defendant in an action of libel may in some cases plead the offer of an apology as a defence, or in mitigation of damages. And by s. 2, in any action for damages for a libel contained in a newspaper or other periodical publication, the defendant may plead an apology and pay money into Court. See LIBEL.

Aporiare, to bring to poverty, to shun or avoid. *Wals. in Ricardo*, 2. See APPORIATUS.

Apostacy, a total renunciation of Christianity, by embracing a false religion, or not any religion at all. A person educated as a Christian who denies the truth of Christianity, or the Divine authority of the Holy Scriptures, is liable to heavy penalties under the 'Blasphemy Act.' See BLASPHEMY.

Apostare, to violate, break, or transgress.—*Blount; Leg. Edw. Conf.* c. 35.

Apostata capiendo, a writ formerly issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff to deliver the defendant into the possession of the abbot or prior.—*Reg. Orig.* 71, 267.

A posteriori. See A PRIORI.

Apostolæ, brief letters of dismission given to an appellant. They state the case and declare that the record will be transmitted.—*Civil Law.* See *Colquhoun's Roman Civil Law*, Vol. III., s. 2370.

Apothecaries [fr. *apothicaire*, Fr.; fr. *αποθήκη*, Gk.], persons who combine the giving of medical advice with the supply of medicines prepared by themselves. Their practice in England and Wales is regulated by 55 Geo. III. c. 194, amended by 6 Geo. IV. c. 133. See also 15 & 16 Vict. c. 56; 21 & 22 Vict. c. 90; 22 Vict. c. 21; 23 Vict. c. 7; 23 & 24 Vict. c. 66; 25 & 26 Vict. c. 91; 31 & 32 Vict. c. 29; and 37 & 38 Vict. c. 34.

Appanage, or **Apanage** [fr. *panis*, Lat., bread, whence *panar*, *apanar*, Prov., to nourish], the provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. 2. The allowance assigned to the prince of a reigning house for a proper maintenance out of the public chest.—1 *Hall. Mid. Ages*, c. 1, p. ii. 88.

Apparator, or **Apparitor**, a messenger, who cites and arrests offenders, and executes the decrees of the judges of the Spiritual Courts. —*Cowel.*

Apparator comitatus, an officer formerly so-called, for whom the sheriffs of Buckinghamshire had a considerable yearly allowance. —*Hale's Sher. Acco.* 104.

Apparel, *excess in.* The penal laws against this luxury were repealed by 1 Jac. I. c. 25.

Apparent heir. See HEIR. In the *Scotch Law*, he is the person to whom the succession has actually opened. He is so called until his regular entry on the lands by service or infeftment on a precept of *clare constat.*

Apparlement [fr. *pareillement*, Fr., in like manner], a resemblance or likelihood.—2 *Rich. II.* st. 1. c. 6.

Apparura, furniture and implements.—*Blount.*

Appeach, to accuse or bewray.

Appeal [fr. *appellatio*, Lat.; *appeller*, Fr.], the removal of a cause from an inferior to a superior Court, for the purpose of testing the soundness of the decision of the inferior Court. Thus there is an appeal from the High Court to the Court of Appeal, from Petty Sessions to Quarter Sessions, and from the County Courts to the High Court.

By the Judicature Acts, 1873 and 1875, a court specially called the Court of Appeal, is formed to take the place of the Exchequer Chamber and the Court of Appeal in Chancery, and for other appellate purposes. See APPEAL, COURT OF.

A criminal 'appeal' was an accusation by one private subject against another of some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. Criminal appeals were either capital or not capital: capital were subdivided into (1) appeals of death or murder; (2) appeals of larceny or robbery; (3) appeals of rape; (4) appeals of arson, which are all obsolete and superseded by 59 Geo. III. c. 46; not capital were *de pace, de plagis, de imprisonamento*, and *mayhem*, superseded by actions of trespass.—*Leache's Hawk. P. C.* ii. 285. Consult *Kendall's Arguments on Trial by Battel.*

Appeal, Court of. This Court, which is constituted under the Judicature Act, 1873, the Appellate Jurisdiction Act, 1876, and the Judicature Act, 1881, has transferred to it the appellate jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, and of the same Court as the Court of Appeal in Bankruptcy, and from the County Palatine of Lancaster, of the Lord Warden of the Stannaries, of the Exchequer Chamber, and of the Judicial

Committee of the Privy Council in appeals, in Admiralty causes, or in matters of Lunacy. The Court consists of the Lord Chancellor, the Lord Chief Justice of England, and the Master of the Rolls (who by the Judicature Act, 1881, sits as a Judge of the Court of Appeal only), as *ex officio* judges, and of five ordinary judges.

The judges may not sit on appeal from judgments to which they themselves were parties.

An appeal to this Court lies as of right from any order or judgment of the High Court, except in criminal matters and as to costs, and by leave of the High Court from any judgment on appeal from an inferior Court. For further appeal to the House of Lords, see *Appellate Jurisdiction Act.*

Appeal of Death. See *supra*, and also *Ashford* v. *Thornton*, 1 *B. & Ald.* 405.

Appeal to Rome, abolished by 24 Hen. VIII. c. 12, and 25 Hen. VIII. cc. 19, 21.

Appearance. When a person is served with a summoning process from a Court he generally comes into such a Court to defend himself by entering an appearance with the proper officer.

There are several modes for a defendant to appear:—

(1) In person.
(2) By attorney.
(3) By guardian.
(4) By committee.

Appearance to actions in the High Court of Justice must be entered within eight days from the service of the writ of summons.

A defendant cited in the Ecclesiastical Court may appear either in person or by proctor; but if a defendant intend to object to the Court's jurisdiction, he should *appear under protest*, to save his contumacy, and then show cause against the citation upon petition and affidavits, upon which the Court either allows the protest and dismisses the defendant, or overrules it, and assigns the defendant to appear absolutely.

In indictments for felony, the accused must always appear and plead in person, and likewise in appeal or on attachment; but in indictments or informations for misdemeanours, the accused may appear by attorney; and in misdemeanours generally, after the accused has once appeared, the trial may proceed in his absence.—2 *Hawk. P. C.* c. 22, s. 1; *Cro. Jac.* 462; 4 *Steph. Comm.*

Appearance sec. stat. (i.e., *Secundum statutum*), which was entered at law by a plaintiff for a defaulting defendant under 12 Geo. I. c. 29, and 2 Wm. IV. c. 39, was abolished by 15 & 16 Vict. c. 76, s. 26.

Appellant, the party appealing; the party resisting the appeal is called *Respondent.*—*Encyc. Lond.*

Appellate jurisdiction, the power of a superior Court to review the decision of an inferior Court. See APPEAL.

Appellatione fundi omne ædificium et omnis ager continetur. 4 Co. 87.—(Under the word '*fundus*' every building and every field is comprehended.)

Appellate Jurisdiction Act, 1876, 39 & 40 Vict. c. 59. By this act an appeal lies to the House of Lords from any judgment or order of the Court of Appeal in England, and also from certain Courts in Scotland and Ireland. Three members of the house, having held high judicial office, form a quorum. The Crown may appoint salaried 'Lords of Appeal in ordinary,' who also sit on the Judicial Committee of the Privy Council (see that title). Appeals may be heard during a prorogation or dissolution of Parliament.

Appellee, one who is appealed against or accused.—*Encyc. Lond.*

Appellor, an accuser; a criminal who accuses his accomplices, one who challenges a jury, etc.—*Ibid.*

Appenage, or **Apennage**, a child's part or portion. It is properly the portion of the king's younger children in France, where, by a fundamental law, called the law of appenages, the king's younger sons formerly had duchies, counties, or baronies granted to them and their heirs, etc., the reversion being reserved to the Crown, as well as all matters of legality as to coinage and levying taxes in such territories.—*Spelm.; Cowel.* See APPANAGE.

Appendant, a thing of inheritance belonging to another inheritance which is more worthy: as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, i.e., a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor and the grant will pass them.—*Co. Litt.* 121 *b.* See APPURTENANCES, COMMON.

Appenditia, the appendages or pertinances of an estate.—*Blount.*

Appensura, the payment of money at the scale or by weight.—*Spelm.*

Applicatio est vita regulæ. 2 Buls. 79.—(Application is the life of a rule.)

Application, a request, a motion to a court or judge; the disposal of a thing.

Appodiare, to lean on or prop up anything. —*Wals.* 1271.

Appointee, a person selected for a particular purpose; also the person in whose favour a power of appointment is executed.

Appointment, direction, designation, the selection of a person for an office. See *infra*.

Appointment of new trustees. Every assurance which creates a trust and nominates trustees, should contain a power to appoint new trustees, and this power should be comprehensive, and should provide for all the usual contingencies. Such a power must be strictly exercised. A trustee who transfers the trust property to another, without an express power to do so, does not thereby pass the trust, for the office, with all its powers and responsibilities, is still vested in him, as he places himself in this predicament; his liability is retained, while he has deprived himself of his control over the property.

In the absence of a power to appoint new trustees, the Chancery Division of the High Court of Justice (see Jud. Act, 1873, s. 34) has jurisdiction to nominate other trustees, pursuant to 12 & 13 Vict. c. 60, and 15 & 16 Vict. c. 55.

Appointment in exercise of a power concerning uses, an instrument which alters, abridges, or suspends a use limited by a prior assurance containing or reserving the power which sanctions such appointment. The seisin to serve the appointed use being transferred by the prior assurance, the appointment vests the legal estate in the appointee, who takes as though he were named in such prior assurance.

A deed of appointment should recite or refer to the power, and be expressed to be in exercise of it, as manifesting the intention of the appointor, or person executing the power, and also of every other authority enabling him in that behalf, so as to guard against any misrecital of the assurance creating the power. It should likewise state that the formalities required for the execution of the power are complied with, and the attestation should set forth that such formalities were observed.

The formalities required by the creator of a power should be few and simple, for many an appointment has failed because they have not been precisely attended to. When the consent of any person is required to the exercise of a power, it is generally a condition precedent, and an execution of the power without such consent is not cured by subsequent acquisition. See Preston's Act, 54 Geo. III. c. 168, as to the attestation of appointments made prior to the 30th July, 1814; and also see 7 Wm. IV. & 1 Vict. c. 26, s. 10, as to appointments exercisable by will, and 22 & 23 Vict. c. 35, s. 12, by deed.

By the 37 & 38 Vict. c. 37, it is now provided that no appointment, which from and after the passing of that Act (30th July, 1874), shall be made in exercise of any power to appoint any property, real or personal, amongst several objects, shall be invalid at law or in equity, on the ground that any object of such power has been altogether excluded.

Appointor, a donee of a power after he has executed it; also a person who nominates another for an office.

Apponere, to pledge or pawn.—*Neubrig. l.* 1, c. 2.

Apporiatus, impoverished.—*Annales de Dunstaplin*, an. 1269.

Apportionment, a division of a whole into parts (usually unequal) proportioned to the rights of more claimants than one. It is either (1) Apportionment in respect of time, or (2) Apportionment in respect of estate.

At common law there is no apportionment in respect of time. When a successor in interest succeeds first before a rent or other periodical payment falls due, he takes, at common law, the whole, and the executors of his predecessor take nothing (*Clun's Case*, 1 *Rep.* 127). This was remedied by 11 Geo. II. c. 19, s. 25, which apportioned rent between the representatives of a deceased tenant for life, and the person succeeding in remainder, and 4 & 5 Wm. IV. c. 22, passed to obviate the doubts which had arisen upon 11 Geo. II. c. 12.

And now the 'Apportionment Act, 1870,' 33 & 34 Vict. c. 35, provides (but without repealing the above Acts) that all rents, annuities, and dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing, or otherwise), shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly (s. 1).

As to apportionment in respect of estate, it is provided by 22 & 23 Vict. c. 35, s. 3, that where the reversion upon a lease is severed, and the rent is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent allotted to him, be entitled to the benefit of all conditions of re-entry for non-payment of the original rent, and the Conveyancing Act, 1881, s. 12, applies the principle of this enactment to conditions *generally*. Like-

wise, the Lands Clauses Act, 1845, s. 119, provides for an apportionment of rent where part only of lands subject to lease is taken under that act.

Apportum, the revenue or profit which a thing brings to the owner. It is commonly applied to a corody or pension.—*Blount.*

Apposal of sheriffs, charging them with money received upon the account of the Exchequer.—22 & 23 *Car. II.* c. 22.

Apposer, an officer of the Exchequer.

Apposition. A word is said to be used in apposition to another in contradistinction to being used disjunctively; thus, if two nouns occur with the word 'or' between them, if the word 'or' be taken to mean 'otherwise called,' the second noun is used *in apposition.* But if it be taken to show that the two words mean two different things, the words are said to be used *disjunctively.*

Appostille [Fr.], an addition or annotation to a document.

Appraisement [fr. *apprécier prix,* Fr.; *pretium,* Lat.] the act of valuing property, goods, furniture, etc. As to appraisement of goods before selling them under a distress for rent, see *Distress.*

Appraisers [fr. *appréciateurs,* Fr.], persons employed to value goods, repairs, labour, etc. By 46 Geo. III. c. 43, and 8 & 9 Vict. c. 76, they are required to take out an annual license. According to an old statute, 11 Edw. I. stat. Acton Burnel, appraisers valuing goods too highly were compelled to take them at their own valuation.

Apprehending offenders. Persons active in doing so are allowed compensation in certain cases specified in 7 Geo. IV. c. 64, s. 28.

Apprehension [fr. *prehendere,* Lat., to catch hold of, *apprehendere,* to seize], the capture of a person upon a criminal charge. As to apprehending offenders in the Colonies escaping into the United Kingdom, and *é converso,* see 6 & 7 Vict. c. 34. As to the apprehension of offenders generally, see 11 & 12 Vict. c. 42, and 24 & 25 Vict. c. 96, s. 103 *et seq.* As to the apprehension of seamen deserting, see 44 Geo. III. c. 13, and 17 & 18 Vict. c. 104, s. 246 *et seq.,* and as to foreign ships, 15 & 16 Vict. c. 26.

Apprendre, a fee or profit taken or received.—*Cowel.*

Apprendre [Fr.] (*to take or seize a thing*), such as exercising the right of common.

Apprentice [fr. *apprendre,* Fr., to learn], a person bound by indentures of apprenticeship to a tradesman or artificer, who covenants to teach him his trade or mystery. The master is bound to instruct his apprentice, and to make him master of the art so far as his capacity to learn will permit. If the master die, or become bankrupt, or abandon the trade, the obligation of the apprentice is at an end. Justices of the peace have jurisdiction in many questions between master and apprentice. For instance, the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, s. 6, makes it an offence, punishable on summary conviction by fine or imprisonment with or without hard labour, for a master to neglect to provide food, etc., for his apprentice. See *Chitty's Statutes,* vol. iv., tit. '*Master and Servant.*'

Apprenticeships were altogether unknown to the ancients. The Roman Law is perfectly silent with regard to them.—*Smith's Wealth of Nations,* b. i. c. x. See SERVANT.

Apprentice en la ley. See last title.

Apprenticii ad legem. Apprentices to the law—barristers. See *Fleta, lib.* ii. c. 37.

Approbate or **reprobate.** A person is said to be approbate and reprobate where he takes advantage of one part of a deed and rejects the rest.—*Scotch Law.* The maxim runs *Qui approbat non reprobat.* One who approbates cannot reprobate.

Appropriare communiam, to discommon and enclose any parcel of land which was before open common.—*Paroch. Antiq.* 336.

Appropriation, the annexing of some ecclesiastical benefice to the proper and perpetual use of some religious house, etc., just as *impropriation* is the annexing a benefice to the use of a lay person or corporation. Appropriation may be severed and the church become disappropriate, if a patron or appropriator present a clerk, who is properly instituted and inducted, for he would then become complete parson; also, if a corporation possessing the benefice is dissolved, the parsonage becomes disappropriate at common law. *Phill. Eccl. Law,* 263—275.

Appropriation of payments, the application by a creditor to one of several debts of a sum of money paid by a debtor on a general account. In such cases the creditor is (in general, provided the debtor has not, on paying, specified what account the payment is to be applied to) justified in applying the payment to which of several accounts he pleases.

Appropriator, a spiritual corporation entitled to the profits of a benefice.

Approve, to augment a thing to the utmost.—2 *Inst.* 474.

Approvement, i.e., improvement. Profits of land; also, where there exists a right of common on a lord's waste, and the lord encloses part of such waste, leaving sufficient common, as he is bound to do by the Statute of Merton.—*Cromp. Juris.* 152, *Reg. Jud.* 8, 9,

Approver, or **prover** [fr. *approver*, Fr "to consent unto], an accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. He is vulgarly called 'Queen's evidence,' which see. This testimony must necessarily be of an unsatisfactory nature, and the practice is for Judges to leave it to juries with the direction not to believe it unless corroborated in some material particular by independent untainted testimony.

Approvers, bailiffs of lords in their franchises. Sheriffs were called the king's approvers in 1 Edw. III. st. 1, c. 1.—*Termes de la Ley*, 49.

Appruare, to take to one's use or profit.—*Cowel.*

Appurtenances, belonging to another thing, as hamlets to a manor, and common of pasture, turbary, etc.; liberties and services, outhouses, yards, orchards, and gardens are appurtenant to a messuage, but lands cannot properly be said to be appurtenant to a messuage.—*Com. Dig.*, tit. '*Appendant and Appurtenant.*'

Appurtenant, pertaining or belonging to.

A principalioribus seu dignioribus est inchoandum. Co. Litt. 18.—(We are to begin with the more worthy or principal parts.)

A priori. All arguments may be divided, according to the relation of the subject-matter of the premises to that of the conclusion, into (*a*) *à priori* (from the antecedent to the consequence), or those of such a nature that the premises would account for the conclusion, were that conclusion granted, which is the Aristotelic method of reasoning; and (*β*) *à posteriori* (from the consequence to the antecedent), or those whose premises could not have been used to account for the conclusion, which is the Baconian method of reasoning. The former class is manifestly argument from cause to effect, since to account for anything signifies to assign the *cause* of it. The latter class comprehends all other arguments.

Apta viro (of a woman), marriageable.

Apt words; words proper to produce the legal effect for which they are intended; sound technical phrases.

Aqua cedit solo. (Water passes with the soil.)

Aqua currit et debet currere. (Water flows and ought to flow.)

Aqua frisca, de, fresh water.

Aquatic rights, those that are exercisable in running or still water.

Aqua pontana, Bridgewater, in Somersetshire.

Aquæ calidæ, Aquæ solis, Akeman-cester, Bath in Somersetshire.

Aquædon, Ediure, *vulgò* Eatoun.

Aquæ ductus, a right to carry a watercourse through another's ground.—*Civil Law.*

Aquædunensis saltus, Waterdon.

Aquædunum, Aieton.

Aquage or **Aquagium**, a watercourse, or toll paid for water carriage.—*Blount.*

Aquæ haustus, a servitude which consists in the right to draw water from the fountain, pool, or spring of another.—*Civil Law.*

Aquæ immittendæ, a servitude which the owner of a house, surrounded by other buildings, so that it has no outlet for its waters, has, to allow them to run upon and over his neighbour's land.—*Civil Law.*

Aquæudensis pons, Eiford.

Aquilædunum, Hoxton.

Aquitania, Aquitain, now containing Guienne and Gascony.

A quo [Lat.] (*from whom* or *which*). See JUDEX A QUO.

A. R., *anno regni*, the year of the reign, as A. R. V. R. 22 (*Anno Regni Victoriæ Reginæ vicesimo secundo*); in the twenty-second year of the reign of Queen Victoria.

Arabant, applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor.—*Cowel.*

Arace, to rase or erase.—*Blount.*

Araho, to make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian Laws.—*Cowel; Spelm.*

Aratia, arable grounds.—*Blount; Cowel.*

Aratrum terræ, as much land as can be tilled by one plough. A term applied to a service rendered by a tenant to his lord.—*Cowel.*

Arbeia, Ireby, in Cumberland.

Arbiter [*Adbiter*, fr. the old Latin *beto*, to go; or perhaps fr. *arpa*, Fin., a lot, symbol, divining-rod.—*Wedgw.*], a private extrajudicial judge; an arbitrator, or referee; a witness. See ARBITRATOR.

Arbitrament, the award or decision of arbitrators upon a matter of dispute, which has been submitted to them.—*Termes de la Ley*, 50.

Arbitrary punishment, such as is left to the discretion of a judge.

Arbitrate, to judge, to make an agreement.

Arbitration, the determination of a matter in dispute by the judgment of one, two, or more persons, called arbitrators, who in case of difference usually call in an "umpire" to decide between them.

Generally speaking, almost all matters in dispute, not being of a criminal nature, may

be referred to arbitration; but at common law there was no mode of making the award binding.

This defect was first cured by the important Statute 9 & 10 Wm. III. c. 15, which enabled parties to agree that a submission to arbitration might be made a *rule of Court*, and consequently binding. This and five subsequent amending enactments were consolidated and further amended by the Arbitration Act, 1889, 52 & 53 Vict. c. 49. By s. 1 of that act 'a submission, (which term by s. 27 means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not), 'unless a contrary intention is expressed, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.' By s. 2 certain scheduled provisions as to appointment of umpire, time for making award, etc., are *primâ facie* included in every submission, and by s. 4 if any party to a submission commence an action against any other party thereto in respect of any matter agreed to be referred, any party to the action may apply to the Court in which it is brought, and such Court may by order stay the action. The act, which contains 30 sections, applies (see s. 24) to every arbitration under any act passed before or after its commencement as if the arbitration were pursuant to a submission, 'except in so far as this act is inconsistent with the act regulating the arbitration or with any rules or procedure authorised or recognised by that act.'

Arbitration between Masters and Workmen. See 'The Arbitration (Masters and Workmen) Act, 1872,' 35 & 36 Vict. c. 46, which amends and enlarges the scope of 5 Geo. IV. c. 96.

Arbitration of exchange, where a merchant pays his debts in one country by a bill of exchange upon another.—2 *Mill's Pol. Econ.* 168.

Arbitrator or **Arbiter,** a disinterested person, to whose judgment and decision matters in dispute are referred.—*Termes de la Ley*, 50.

The civilians make a difference between *arbitor* and *arbitrator*, though both found their power in the compromise of the parties; the former being obliged to judge according to the customs of the law: whereas the latter is at liberty to use his own discretion, and accommodate the difference in that manner which appears most just and equitable.

An arbitrator ought to be an indifferent person between the disputants, and should be incorrupt and impartial.

An arbitrator's powers and duties are conferred and imposed by the submission. He is generally the final judge of law and facts; but he is bound by the rules of law, and cannot award anything contrary thereto.

The submission determines the matters which are within an arbitrator's authority, His authority commences from the time of the agreement to refer being signed by all the parties.

As soon as the award is published, the arbitrator's authority is at an end.

An arbitrator may be called as a witness in an action to enforce his award, to prove what passed before him, but he may not be asked as to what passed in his own mind. *Buccleuch* (*Duke of*) v. *Metropolitan Board of Works*, *L. R.* 5 *H. L.* 418.

Whether arbitrators not acting under an order of Court are entitled to any fee for their services without express contract, is doubtful. See 'Chitty on Contracts,' 12th ed. ch. xix., s. 4, and *Crampton & Holt* v. *Ridley & Co.*, 20 *Q. B. D.* 48, in which case an opinion is expressed that they are. If they act under Order of Court, their remuneration is determined by the Court Order s. 15 of the Arbitration Act, 1889.

Arbitrators under the Judicature Acts are called 'Referees.' See that title and ARBITRATION.—Consult *Russ. on Arbitration.*

Arbitrio domini res æstimari debet. 4 Inst. 275.—(The price of a thing ought to be fixed by its owner.)

Arbitrium est judicium boni viri secundum æquum et bonum. 3 Bul. 64.—(An award is the judgment of a good man, according to justice.)

Arbor consanguinitatis, a tree-shaped table, showing the genealogy of a family.—See the *Arbor civilis* of the civilians and canonists, *Hale's Hist. of Com. Law*, 335.

Arbor, dum crescit; lignum cum crescere nescit. 2 Bul. 82.—(A tree is so called whilst growing; but wood when it ceases to grow.)

Arca cyrographica, a common chest with three locks and keys, kept by certain Christians and Jews, wherein all the contracts, mortgages, and obligations belonging to the Jews were preserved to prevent fraud, by order of Richard I.—*Hov. Ann.* 705.

Archaionomia, a collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.

Archbishop [fr. *ertz bischoff*, Teut.; *archeveque*, Fr.; *archiepiscopus*, Lat.; ἀρχιεπίσκοπος, Gk., fr. ἄρχων, chief, and ἐπίσκοπος, bishop, fr. ἐπισκοπέω, to take care of], the chief of the clergy in his province; he has supreme

power under the Queen, in all ecclesiastical causes, and superintends the conduct of other bishops his suffragans. The archbishops are said to be *inthroned*, when they are vested in the archbishopric, whereas bishops are said to be *installed*. England has two archbishops, Canterbury and York. The Archbishop of Canterbury is styled Primate of *all* England, and the Archbishop of York Primate of England. The Archbishop of Canterbury is styled [John], by Divine Providence, Archbishop of Canterbury. See BISHOP.

Archdeacon [fr. ἄρχων, chief, and διακονέω, Gk., to minister], a substitute for the bishop, having ecclesiastical dignity and jurisdiction over the clergy and laity next after the bishop, either throughout the diocese or in some part of it only. He visits his jurisdiction once every year, and has a Court where he may inflict penance, suspend or excommunicate, and hear ecclesiastical causes, subject to an appeal to the bishop by 24 Hen. VIII. c. 12. He examines candidates for holy orders, and inducts clerks, upon receipt of the Bishop's mandate.—*Wood's Inst.* 30. The Law styles him the bishop's vicar or vicegerent.

Archdeacon (The) of Bologna, a writer of great repute on Ecclesiastical Law.

Archdeaconry, a division of a diocese, and the circuit of an archdeacon's jurisdiction. The Act 37 & 38 Vict. c. 63, facilitates the re-arrangement of the boundaries of archdeaconries and rural deaneries.

Archery, a service of keeping a bow for the lord's use in the defence of his castle.—*Co. Litt.* 157.

Arches Court [fr. *curia de arcubus*, Lat.], a court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the Dean of the Arches, because his court was anciently held in the church of Saint Mary-le-Bow (*Sancta Maria de arcubus*), so named from the steeple, which is raised upon pillars, built *archwise*. It was until recently held, as also were the other principal Spiritual Courts, in the hall belonging to the College of Civilians, commonly called Doctor's Commons. It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the Archbishop in London, but the office of Dean of the Arches having been for a long time united to that of the archbishop's principal official, the Judge of the Arches, in right of such added office, receives and determines appeals from the sentences of all Inferior Ecclesiastical Courts within the province. There was formerly an appeal to the King in Chancery, or to a Court of Delegates, appointed under the Great Seal by 25 Hen. VIII. c. 19, as supreme head of the English Church, instead of to the Bishop of Rome, who originally exercised the jurisdiction; but the 2 & 3 Wm. IV. c. 92, and 3 & 4 Wm. IV. c. 41, provided that the appeal should be to the Judicial Committee of the Privy Council. Consult *Phillimore's Ecclesiastical Law*. The jurisdiction of the Court in testamentary matters was transferred to the Court of Probate by 20 & 21 Vict. c. 77.

By the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), provision was made for the appointment of a new ecclesiastical judge (who was appointed soon after the passing of the act), it being enacted that 'whensoever a vacancy shall occur in the office of official principal of the Arches Court of Canterbury, the judge shall become *ex-officio* such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken [see *Dale's Case*, 6 *Q. B. D.* 376] in the Arches Court of Canterbury.' See PUBLIC WORSHIP REGULATION Act, 1874.

Archetype, the original copy.

Archidiaconal, belonging to an archdeacon.

Archiepiscopal, belonging to an archbishop.

Archigrapher, a chief secretary.

Archimandrite, the chief monk in the Greek Church.

Archives [fr. *arca*, Lat., a chest; or ἀρχεῖον, Gk., a council-house], a chamber or place where ancient records, charters, and evidences are kept. It is sometimes used for the writings themselves—thus we say the archives of a college, a monastery, etc.—*Cowel.*

Archivist, a keeper of archives.

Area [Lat., a threshing-floor], an enclosed yard or open place connected with a house. 2, *Metaphor*, the region of discussion.

A rendre [Fr., to render or yield], such as rents and services.

Arentare, to rent or let out at a certain rent.—*Blount.*

Areopagite, a lawyer or chief judge of the Areopagus in capital matters in Athens; a tribunal so called after a hill or slight eminence, in a street of that city dedicated to Mars, where the Court was held in which those judges were wont to sit. St. Dionysius, converted to Christianity by St. Paul, was one of those judges.

Arepennis, half an acre.—*Gallic.*

Areriesment, hindrance, surprise, affrightment.—*Blount.*

A rescriptis valet argumentum. Co. Litt. 11.—(An argument drawn from rescripts is sound.) A rescript is a decision of the Pope or Emperor on a doubtful point of law.

Argadia, or **Argathalia,** Argyleshire, in Scotland.

Argent, silver, sometimes called *Luna* in the arms of princes, and *Pearl* in those of peers. As silver soon becomes tarnished, it is generally represented in painting by white. In engraving it is known by the natural colour of the paper.—*Heral. Term.*

Argentarius, a money-dealer or banker.

Argentum album, white money, silver coin, or pieces of bullion which anciently passed for money.—*Spelm.*

Argentum Dei, God's money, *i.e.*, money given in earnest upon the making of any bargain, hence, *arles*, earnest.—*Blount.*

Argil, or **Argoil** [fr. *argilla*, Lat.], clay, lime, and sometimes gravel, also the lees of wine gathered to a certain hardness.—*Law Fr.*

Arguendo, in the course of the argument.

Argument, in rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable. In reasoning, Locke observes that men ordinarily use four sorts of arguments. The *first* is to allege the opinions of men, whose parts and learning, eminency, power, or some other cause, have gained a name, and settled their reputation in the common esteem, with some kind of authority; this may be called *argumentum ad verecundiam.* The *second* is to require the adversary to admit what they allege as a proof, or to require a better; this he calls *argumentum ad ignorantiam.* The *third* is to press a man with consequences drawn from his own principles, concessions, or actions; this is known by the name of *argumentum ad hominem.* The *fourth* the using proofs drawn from any of the foundations of knowledge or probability; this he calls *argumentum ad judicium,* and he observes that it is the only one of all the four that brings true instruction with it, and advances us in our way to knowledge.

Argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida. Co. Litt. 395.—(Arguments bring hidden and obscure facts to the light of reason, and render them clear.)

Argumentative. A pleading in which the statement on which the pleader relies is implied instead of being expressed, is argumentative. As if B. be sued for converting goods of A., and B. plead that 'A. never had any goods,' the proper pleading is, that the goods were not the goods of A., and that is to be inferred only from the words used. This vice in pleading is not a ground of demurrer; but where pleadings are so framed as to prejudice, embarrass, or delay the fair trial of the action, they may be struck out or amended.

Argumentosus, ingenious. *Neub.* 1, i. c. 14.

Argumentum à communiter accidentibus in jure frequens est. Broom's Max., 5th ed., 44.—(An argument drawn from things commonly happening is frequent in Law.)

Argumentum à divisione est fortissimum in jure. 6 Co. 60.—(An argument from division is most powerful in Law.)

Argumentum à majori ad minus negativè non valet; valet è converso. Jenk. Cent. 281.—(An argument from the greater to the less is of no force negatively, affirmatively it is).

Argumentum à simili valet in lege. Co. Litt. 191.—(An argument from a like case avails in Law.)

Argumentum ab auctoritate est fortissimum in lege. Co. Litt. 254.—(An argument from authority is most powerful in Law.)

Argumentum ab impossibili plurimum valet in lege. Co. Litt. 92.—(An argument deduced from an impossibility greatly avails in Law.)

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. Co. Litt. 258.—(An argument from inconvenience is good in Law; because the Law will not permit any inconvenience.)

Ariconium, Kenchester, near Hereford.

Arid, Villa de, Drayton, or Dreydon in Shropshire.

Arierban or **Arriere-Ban** [according to Casseneuve, *ban* denotes the convening of the noblesse or vassals, who held fees immediately of the Crown; and *arriere*, those who only held of the Crown mediately], an edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal.— *Spelm.*

Arietum levatio, an old sportive exercise, supposed to be the same with running at the quintain.—*Cowel.*

Aristocracy [fr. ἄριστος, greatest, and κρατέω, Gk., to govern], a form of government which is lodged in a council composed of select members of nobles, without a monarch, and exclusive of the people; also a privileged class of persons or political party in a state. —*Paley's Polit. Phi.; Brougham's Polit. Phi.*

Aristo-democracy, a form of government composed of nobles and commonalty.

Arles, earnest.

Arma in armatos sumere jura sinunt. 2 Jus. 574.—(The laws permit the taking up of arms against armed persons.)

Arm of the Sea, a bay, road, creek, cove,

port, or river, where the water, whether salt or fresh, ebbs and flows.—5 *Co.* 107.

Arma dare, to dub or make a knight. The word '*arma*' is here rendered a sword, although a knight was sometimes made by giving him the whole armour.—*Ken. Paroch. Antiq.* 288.

Arma libera (*free arms*). When a servant was set free, a sword and lance were usually given to him.—*Leg. Wil.* c. 65.

Arma moluta (*arma emolita*), sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise.—*Fleta*, lib. 1, c. 33, par. 6.

Arma mutare, to change arms, a ceremony observed in confirmation of a league or friendship.—*Blount.*

Arma reversata, reversed arms, a punishment for a traitor or felon.—*Cowel.*

Armaria. See ALMARIA.

Arm. fil. *Armigeri filius:* an esquire's son.

Armiger, an esquire. A title of dignity belonging to gentlemen who bear arms.—*Ken. Paroch. Antiq.* 576.

Armiscara, an ancient mode of punishment, which was to carry a saddle at the back as a token of subjection—*Spelm.*

Armistice, a suspension of hostilities between belligerents.

Armorial bearings, a device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings; and all persons entitled to bear arms can register their genealogies and families at the Herald's College, Benet's Hill, London, on payment of a moderate fee, the heralds being the examiners of these matters, and the recorders of genealogies. The 43 Geo. III. c. 161, imposed an assessed tax upon armorial bearings, whether borne on plate, carriages, seals, or in any other way. This act is now replaced by 32 & 33 Vict. c. 14, s. 19, by which 'armorial bearings' includes any armorial bearing, crest, or ensign, by whatever name called, and whether registered in the College of Arms or not. This Act, by s. 18, fixes the tax as follows:—if such armorial bearings shall be painted, marked, or affixed on a carriage, 2*l.* 2*s.*; and if not so painted, but otherwise worn or used, 1*l.* 1*s.* See *Planché's Pursuivant of Arms.*

Armorum appellatione, non solum scuta et gladii, et galeæ, sed et fustes et lapides continentur. Co. Litt. 162.—(Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones.)

Armour and Arms, are understood in Law, to mean things (see preceding title) which a person wears for defence, or takes in hand, or uses in anger, to strike or cast at another. Arms are also *insignia*, i.e., ensigns of honour, which were formerly assumed by soldiers of fortune, and painted on their shields to distinguish them, since they could not be distinguished by the ancient coat of mail, from its covering the whole body. King Richard I., during his crusade, first made arms hereditary. Every subject in this realm has a right to carry arms for defence suitable to his condition and degree, and allowed by law, and this right is embodied in the Bill of Rights, 1 W. & M. c. 2, s. 2. The 2 Edw. III. c. 3, prohibits persons going armed under circumstances which may tend to terrify the people or indicate an intention of disturbing the public peace. The 60 Geo. III. c. 1, prohibits the training of persons without lawful authority to the use of arms, and authorizes any justice of the peace to disperse any assembly of persons that he may find engaged in such occupation, and to arrest any of the persons present. The Act 33 & 34 Vict. c. 57, imposes a penalty on persons using or carrying a gun elsewhere than in a dwelling house or the curtilage thereof, without a license. The duty on such license is 10*s.*

Army [fr. *arme*, Fr.], the military force of a country. Prior to A.D. 1879 and since A.D. 1689 the army was regulated by Annual Mutiny Acts usually expiring in April (see e.g., 41 Vict. c. 10), and by the 'Articles of War' which those Acts empowered the Sovereign to make. In 1879 the Army Discipline Act, 42 & 43 Vict. c. 33, consolidated the provisions of the Mutiny Act with the Articles of War. This Act having been amended by the Army Discipline and Regulation Annual Act, 1881, which substituted 'summary' for corporal punishment, and also by the Regulation of the Forces Act, 1881, a fairly complete military code is now contained in the 'Army Act, 1881,' 44 & 45 Vict. c. 58.

This Act of 1881, in like manner as did the Act of 1879, requires to be removed by an annual 'commencement' act (see, e.g., 54 Vict. c. 5) to be passed for that purpose. Such annual act follows the precedent of the Mutiny Acts in reciting the illegality of a standing army in time of peace without consent of Parliament (as declared by the Bill of Rights, 1 W. & M. s. 2, c. 2), and in specifying the exact number of forces to be employed for the current year.

The administration of the estate of officers or soldiers dying on service is regulated by the Regimental Debts Act, 1863, 26 & 27

Vict c. 57, and Regimental Exchanges by the Regimental Exchange Act, 1875, 38 Vict. c. 16.

Army Brokerage Acts, 5 & 6 Edw. VI. c. 16; 49 Geo. III. c. 126, acts forbidding the purchase of offices; so called by 38 Vict. c. 16, Regimental Exchanges Act, 1875.

Arnaldia, a disease that makes the hair fall off, otherwise called *alopecia*, because foxes are subject to it.—*Hoved.* 693.

Arnalia, arable grounds.—*Domesday*, tit. '*Essex.*'

Aromatarius, a word formerly used for a grocer.—1 *Vent.* 142.

Arpen, or **Arpent,** an acre or furlong of ground. According to *Domesday Book*, 100 perches make an arpent.—*Blount.*

Arpentator, a measurer or surveyor of land.—*Cowel.*

Arquebuss [fr. *haeck-buyse, haeck-busse*, Du., properly a gun fired from a rest, from *haech*, the hook or forked rest on which it is supported, and *busse*, Germ., *büchse*, a fire-arm. From *haecke-busse*, it became *harquebuss*, and in It., *archibuso* or *arcobugia*, as if from *arco*, a bow. In Scotch it was called a *hagbut of croche*; Fr. *arquebus à croc.*, James., Wedgw.], a short hand-gun, a caliver or pistol, mentioned in some of our ancient statutes.—*Fr. Law.*

Arraiatio peditum, arraying of foot soldiers.—1 *Edw. II.*

Arraiers, officers who had the care of the soldiers' armour, and whose business it was to see them duly accoutred. Commissioners were afterwards appointed for the same purpose.—*Blount.*

Arraign [fr. *arraisonner, aresner, aregnir, arraigner*, old Fr., i.e. *ad rationem ponere*, Lat., to call one to account], to bring a prisoner to the bar of the Court to answer the matter charged upon him in the indictment. The arraignment of a prisoner consists of calling upon him by name, and reading to him the indictment (in the English tongue), and demanding of him whether he be guilty or not guilty, and entering his plea. The pleas upon arraignment are either the general issue, i.e., not guilty, or a plea in abatement or in bar, or the prisoner may demur to the indictment, or he may confess the fact, upon which the Court proceeds immediately to judgment. But if the prisoner 'shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it is now lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if the person had so pleaded the same' (7 & 8 Geo. IV. c. 28, s. 2). And see 39 & 40 Geo. III. c. 94, s. 2, and 3 & 4 Vict. c. 50, s. 3; 2 *Hale's P. C.* 151; *Hawk. P. C.* c. 28, s. 1; and *Archbold's Criminal Pleading.*

Arraigns, Clerk of, an assistant to the clerk of assize.

Arrameur, an ancient port-officer, whose business was to load and unload vessels.

Arrangements between debtors and creditors. The 192nd section of the Bankruptcy Act, 1861, allowed a debtor when sued to plead that a majority in number representing three-fourths in value of his creditors had agreed by deed to accept a composition for their debts binding on all; and the 125th and 126th sections of the Bankruptcy Act, 1869, which repealed the act of 1861, allowed liquidation by arrangement and composition with creditors by resolutions passed at similarly representative meetings to take the place of proceedings in bankruptcy. The Bankruptcy Act, 1883, having repealed the act of 1869 without re-enacting these clauses, secret arrangements with creditors outside the law of bankruptcy became common, and in order to legalise and regulate these arrangements, the Deeds of Arrangement Act, 1887, 50 & 51 Vict. c. 57, was passed. By this act arrangements outside the bankruptcy law, whether under seal or not, for assigning a debtor's property to his creditors, or for compounding with them, or for giving them the control of his business, are declared to be void unless registered with the registrar of bills of sale within seven clear days after the first execution thereof by the debtor or any creditor.

Railway Companies unable to meet their engagements with their creditors may, under the Railway Companies Act, 1867, by schemes of arrangement filed in the Chancery Division of the High Court, assented to by three-fourths in value of their creditors, and confirmed by the Court, reorganise their finances.

Arras, a marriage portion.—*Spanish.*

Array [fr. *arredare*, It., to get ready], to rank or set forth a jury of men impannelled upon a cause. To challenge the array of the pannel is at once to except against all persons arrayed or impannelled, in respect of partiality or some default in the sheriff.—*Co. Litt.* 156. If the sheriff be of affinity to any of the parties, or if any one or more of the jurors are returned at the nomination of either party, or for any other partiality, the array shall be quashed.—See *Archbold's Criminal Pleading.*

Array, military commission of. Previous to the reign of Henry VIII., in order to protect the kingdom from domestic insurrections

or the prospects of foreign invasions, it was usual from time to time for our princes to issue commissions of array, and send into every county officers in whom they could confide, to muster, array, or set in military order the inhabitants of every district; the form of the commission was settled by 5 Hen. IV., so as to prevent the insertion therein of any new penal clauses.—*Rushworth*, pt. 3, pp. 662, 667.

Arrears, or **Arrearages**, money unpaid at the due time: as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. —*Cowel.*

Arrectatus, one suspected of a crime.—*Offic. Coronat.*

Arrected, reckoned, considered.—1 *Inst.* 173, *b & n.*

Arrenatus, arraigned, accused.—*Rot. Parl.* 21 *Edw. I.*

Arrendare, to let lands yearly.

Arrentation [fr. *arrendar*, Span.], licensing the owner of lands in a forest, to enclose them with a low hedge and small ditch according to the assize of the forest, under a yearly rent. *Saving the arrentations*, is reserving a power to give such licenses.—*Ordin. Forestæ*, 34 *Edw. I.* s. 5.

Arrest [fr. *restare*, Lat.; *arrestare*, It.; *arrester*, Fr., to bring one to stand], the restraining of the liberty of a man's person in order to compel obedience to the order of a court of justice, or to prevent the commission of a crime, or to ensure that a person charge or suspected of a crime may be forthcoming to answer it. Arrests are either in civil or criminal cases; civil arrests must be effected, in order to be legal, by virtue of a precept or writ issued out of some Court, but every person has authority to arrest criminals without warrant or precept.—*Termes de la Ley*, 52. The law of civil arrest, so far as it still exists, is regulated by the Debtors Act, 1869 (see that title), which abolished imprisonment for debt except in special cases, as where a debtor has the means to pay his debt but refuses to do so. The two great statutes for securing the liberty of the subject against unlawful arrests and suits are *Magna Charta* and the *Habeas Corpus Act* (31 Car. II. c. 2), which is amended and enforced by 56 Geo. III. c. 100.

Arrest of inquest, pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.—*Bro.* tit. '*Repleader.*'

Arrest of judgment. An unsuccessful defendant may move that the judgment for the plaintiff be arrested or withheld, notwithstanding a verdict given, on the ground that there is some substantial error appearing on the face of the record which vitiates the proceedings. Judgment may be arrested for good cause in criminal cases, if the indictment be insufficient.—3 *Inst.* 210; and see *Br. & Had. Com.* iii. 369, and iv. 468. If the judgment be arrested, each party pays his own costs.

Arrest on mesne process, abolished by the Debtors Act, 1869, the power of arrest upon mesne process, which was originally very extensive, having been previously confined by 1 & 2 Vict. c. 110, s. 1, to the case of a debtor about to quit England, and where the amount of the debt was 20*l.* or upwards. See MESNE PROCESS.

Arrestandis bonis ne dissipentur, a writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction.—*Reg. Orig.* 126.

Arrestando ipsum qui pecuniam recepit, a writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.—*Ibid.* 24.

Arrestee, the person in whose possession a debt or property has been attached by arrestment.—*Scotch Law.*

Arrester, the person who procures an arrestment.—*Ibid.*

Arrestment, a process of attachment prohibiting a person, in whose hands a debtor's movables are, to pay or deliver up the same to such debtor, till a creditor, who has procured an arrestment to be laid on, be satisfied, either by caution, i.e., security, or payment, according to the grounds of arrestment.—*Ibid.*

Arrestment jurisdictionis fundandæ causâ, a process to bring a foreigner within the jurisdiction of the Courts of Scotland. The warrant attaches a foreigner's goods within the jurisdiction, and these will not be released unless caution or security be given.—*Ibid.*

Arresto facto super bonis mercatorum alienigenorum, a writ against the goods of aliens found, within this kingdom, in recompense of goods taken from a denizen in a foreign country, after denial of restitution.—*Reg. Orig.* 129. The ancient civilians called it *clarigatio*, but by the moderns it is termed *reprisalia.*

Arret [Fr.], a judgment, decree, or sentence.

Arretted, charged. The convening a person charged with a crime before a judge.—*Staundf. Pl. Cr.* 45. It is used sometimes for *imputed* or *laid unto:* as no folly may be *arretted* to one under age.—*Cowel.*

Arrha, short for *arrhabo* [fr. ἀρράβων, Gk.], earnest, pledge, evidence of a completed bargain.—*Jacob.*

Arriage and **Carriage,** indefinite services formerly demandable from tenants; abolished by 20 Geo. II. c. 50, ss. 21, 22.

Arriere fee, or **fief,** a fee dependent on a superior fee. These fees originated when dukes and counts, rendering their governments hereditary, distributed to their officers parts of the domain, and permitted those officers to gratify the soldiers under them in the same manner.—*Encyc. Lond.*

Arriere vassal, the vassal of a vassal.

Arrogation, the adoption of a person of full age, while adoption properly so called was of a person under full age.—*Sand. Just.*, 7th ed., 43, 312.

Arrura [fr. ἄρομρα, Gk.], a day's ploughing.—*Paroch. Antiq.* 41.

Arsenals [fr. *arzana, darzena, tarzana,* It.], dockyards, magazines, and other military stores.

Arsenic, regulating sale of.—14 & 15 *Vict.* c. 13.

Arser in le main, burning in the hand. The punishment of criminals who had the benefit of clergy, which benefit was abolished by 7 & 8 Geo. IV. c. 28.—*Termes de la Ley.*

Ars est celare artem.—(True art consists in concealing that any art is used.)

Ars fit quod à teneris primum conjungitur annis. 3 Inst. Epil.—(That becomes an art which is joined to us from our tender years.)

Arson [fr. *ardeo,* Lat., to burn], the malicious firing of a house or other building. The law upon this subject is to be found in 24 & 25 Vict. c. 97, ss. 1—8. As to maliciously setting fire to ships, see ss. 42—4; to crops, etc., ss. 16—18; to coal-mines, s. 27; and to railway buildings, 14 & 15 Vict. c. 19, s. 8.

Arsura, the trial of money by fire, after it was coined.—*Blount.*

Art, Words of, words used in a technical sense; words scientifically fit to carry the sense assigned them.

Art and part, a Scotch law term. Signifies the aiding or abetting in the perpetration of a crime.—*Bell's Law Dictionary.*

Art Unions, 'voluntary associations for the purchase of paintings, drawings, and other works of art to be distributed *by chance* or otherwise amongst the members.' So defined by 9 & 10 Vict. c. 48, which legalizes the distribution by chance (provided a royal charter incorporating the association shall have been obtained), which would otherwise be illegal under the Lottery Act.

Art, Exhibition of works of. The Act 29 & 30 Vict. c. 16, enables the owner for the time being of any work of art, without incurring any responsibility for any consequent loss or injury, to lend such work to the Lord President for the time being of the Privy Council for any period not exceeding twelve months, to be exhibited to the public, by him or by his direction, at the exhibitions therein mentioned.

Arthel, Ardhel, or **Arddelio,** to avouch, as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel,* i.e., vouchee, to clear him of the felony, but provision was made against it by 28 Hen. VIII. c. 6.—*Blount.*

Article [*articulus,* Lat.], a complaint exhibited in the Ecclesiastical Court by way of libel.—3 *Bl. Com.* 109, 2. The different parts of a libel, responsive allegation, or counter allegation in the Ecclesiastical Courts.

Articled clerk, a pupil of an attorney or solicitor titles now merged in one,—'Solicitor of the Supreme Court,'—who undertakes, by articles of clerkship, containing covenants, mutually binding, to instruct him in the principles and practice of the profession. As to the articles of service, their registration and enrolment, the mode of service, examination, admission, and fees, see 6 & 7 Vict. c. 73; 7 & 8 Vict. c. 86; 14 & 15 Vict. c. 88; 15 & 16 Vict. c. 73; 16 & 17 Vict. c. 63; 19 & 20 Vict. c. 81; 20 & 21 Vict. c. 39; and 23 & 24 Vict. c. 127. The 37 & 38 Vict. c. 68, enables articled clerks to hold offices or engage in employments upon certain conditions, as to which see sections 4 *et seq.* And see SOLICITOR.

Articles, divisions and paragraphs of a document or agreement. It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

Articles are therefore considered as a memorandum or minute of an agreement to make some future disposition or modification of real property. Such an instrument will create a trust or equitable estate, and a specific performance of it will be decreed in equity.

Articles are usually entered into for the purchase and sale of lands, for the taking and granting of leases, for making mortgages and settlements on marriage, and for forming partnerships.

And see IMPEACHMENT.

Articles, Lords of, a committee of the Scottish Parliament, which, in the mode of its election, and by the nature of its powers,

was calculated to increase the influence of the Crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of Parliament, and at the Revolution, the Convention of Estates declared it a grievance, and accordingly it was suppressed by the act 1690, c. 3.

Articles of religion, commonly called the Thirty-nine Articles, a body of divinity drawn up by the convocation in 1562, and confirmed by James I. Consult *Burnet on the 'Articles.'* The 17 & 18 Vict. c. 81, ss. 43, 44, has rendered unnecessary subscription to these articles, or any oath, on matriculating or on taking a degree in the University of Oxford; and 19 & 20 Vict. c. 88, ss. 45, 46, contains a similar enactment in regard to the University of Cambridge.

Articles of roup, the conditions under which property is exposed to sale by auction. —*Scotch Law.*

Articles of the peace, a complaint exhibited either in the Queen's Bench at Westminster, Court of Oyer and Terminer, or Sessions of the Peace, when any one has just cause to fear that some one will burn his house, do him some corporal hurt, or procure a third person to perpetrate it. Upon articles setting forth the fact being sworn to by the complainant, sureties of the peace are taken for such a length of time as the Court shall think necessary, not being confined to a twelvemonth. 1 *T. R.* 696; *Bac. Ab.*, tit. '*Surety of the Peace.*'

Articles of war, a code of laws for the regulation of the land forces, made prior to 1879, in pursuance of the several annual acts against mutiny and desertion. See ARMY. Formerly there were also *Articles of the Navy*, embodied in 22 Geo. II. c. 33; but that statute, and others amending it, were repealed by 23 & 24 Vict. c. 123.

Articuli cleri, statutes containing certain articles relating to the church, clergy, and causes ecclesiastical, made at Lincoln.—9 *Edw. II.* st. 1; 1 *Reeves*, c. xii. 290.

Articuli super chartas, the 28 Edw. I. st. 3, s. 2; *Reeves*, c. ix. 103; and c. xi. 233.

Articulus cleri. A resolution of convocation.

Artificers, persons who are masters of their art, and whose employment consists chiefly in manual labour.—5 *Geo. IV.* c. 97, and 6 *Geo. IV.* c. 135; *Cunningham.*

Artificial person, a corporation, a body of men, a company.

Artillery Ranges Act, 1862.—25 & 26 *Vict.* c. 36.

Artizans' and Labourers' Dwellings.—See LABOURERS' DWELLINGS.

A rubro ad nigrum, to proceed to the sense of the text in a statute by looking at the title; the title was written in red, the text in black.

Arundinetum [fr. *arundo*, Lat.], a ground or place where reeds grow.—1 *Inst.* 4.

Arundinis vadum, the ancient name of Redbridge, in Hampshire.

Aruntina vallis, the ancient name of Arundel in Sussex.

Arvil-supper, a feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at funeral solemnities, and *arvil, arval*, or *arfal*, the burial or funeral rites.—*Cowel.*

Arvonica, the ancient name of Carnarvonshire.

As, a pound weight, a unit, the whole of an inheritance. For its divisions, see *Sand. Just.*, 7th ed., 193; *Cum. C. L.* 139 n. (1); and *Tayl. C. L.* 491.

As against, as between: these words contrast the relative position of two persons with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it, as between himself and a stranger, or as against a stranger; reference being made by this form of words to the rights of the bailor.

Ascendants, the progenitors of a family.

Ascesterium, a monastery.—*Du Cange.*

Ascriptitius, a naturalized foreigner.—*Civ. Law.*

Ashbourne Act, the Purchase of Land Ireland Act, 1885, 48 & 49 Vict. c. 73, to provide greater facilities than those given by part five of the Land Law Ireland Act, 1881, for the sale of land to occupying tenants in Ireland; introduced in the House of Commons by Mr. Gibson as Attorney-General for Ireland, afterwards Lord Ashbourne. Amended by the Purchase of Land Ireland Amendment Act, 1888, and the Purchase of Land Ireland Act, 1891, 51 & 52 Vict. c. 49, and 54 & 55 Vict. c. 49.

Ash Wednesday, the first day of Lent. It was anciently called *Caput Jejunii*, the head of the fast; or *Dies Cinerum*, the day of ashes. It took its name from an old custom of casting ashes upon penitents, and then thrusting them from the church.—*Wheatley on the Com. Prayer*, c. v., s. 11.

Asper, a Turkish coin, value five farthings.

Asphyxia [fr. ἀ, not, and σφύξις, Gk., pulse], suspended animation, produced by the non-conversion of the venous blood of the lungs into arterial.—*Dunglison.*

Asportation, carrying away or removing goods. In all larcenies, there must be both a

taking and a carrying away (*cepit et asportavit*).—4 *Bl. Com.* 231.

Assach, or **Assath**, a custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of three hundred men. Abolished by 1 Hen. V. c. 6. Consult 27 Hen. VIII. c. 7.—*Spelm.*

Assart, or **Essart** [fr. *Assartum* in Lat.], an offence committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offence if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws*, Part I., 171.

Assassination [*Hashish* is the name of an intoxicating drug, prepared from hemp, in use among the natives of the East. Hence, Abram '*Haschischin*,' a name given to the members of a sect in Syria, who wound themselves up by doses of *hashish* to perform, at all risks, the orders of their lord, known as the Sheik, or Old Man of the Mountain. As the murder of his enemies would be the most dreaded of these behests, the name of *Assassin* was given to one commissioned to perform a murder. *Wedgw.*], murdering a person by lying in wait for hire.—*Jacob.*

Assault [fr. *salire*, Lat., to leap; *sailler*, *assailler*, Fr., to assail; *insultus*, Lat.], an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon. No words, how provoking soever they be, will amount to an assault. Assault does not always necessarily imply a hitting or blow; because in trespass for *assault and battery*, a person may be found guilty of the assault, but not guilty of the battery. But *battery* always includes an assault.—1 *Hawk. P. C.* c. lxii. s. 1. As to aggravated assaults, see 24 & 25 Vict. c. 100, s. 43.

Assay [fr. *exigere*, Lat., to test] *of weights and measures*, the examining of weights and measures by clerks of markets, etc.—*Blount.* Also the testing and proving of coins, metals, etc. By 7 & 8 Vict. c. 22, s. 2, it was made felony to forge or counterfeit any assay mark.

Assayer of the King, an officer of the Mint, who tried the silver; he was indifferently appointed by the Master of the Mint and the merchants, who carried silver thither for exchange.—*Ibid.*

Assayaire, to associate or take as fellow-judges; used in old charters.—*Cowel.*

Assecurare, to secure by pledges, a solemn interposition of faith.—*Hov.* 1174.

Assembly [fr. *simul*, Lat., together; hence *ensemble*, *assembler*, Fr., to draw together]. **General**, the highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by the Act 5th, Assembly, 1694.

Assembly, unlawful, a meeting of three or more persons to do an unlawful act.—3 *Inst.* 9; 1 *Hawk.* 155. See OFFENCE.

Assent, or **Consent**, agreeing to, or recognizing a matter, as an executor's assent to a legacy, or the assent of a corporation to bylaws, etc. See ROYAL ASSENT.

Assertory covenant, an affirming promise under seal.

Assess [fr. *assessum*, Lat., setting a tax], to rate or ascertain.

Assessed taxes, properly duties varying with the value of the property on which they are charged, as the property tax, house tax, or land tax, but the term is also applied to the duties charged upon persons in respect of articles in their use or keeping, as servants, carriages, or armorial bearings.

Assessors, literally those who sit by the side of another: persons appointed to ascertain and fix the value of taxes, rates, etc. Also persons sometimes associated with judges of courts to advise and direct the decisions of such judges.

By the 56th Section of the Jud. Act, 1873, the High Court or the Court of Appeal may, when it may think it expedient, call in the aid of one or more assessors specially qualified, and try and hear the matter in question wholly or partially with the assistance of such assessors, but the powers of this section have not, it is believed, been exercised, except in Admiralty cases. By the County Court Admiralty Jurisdiction Act, 1868, s. 14, provision is made for the appointment of assessors of 'nautical skill and experience' in admiralty actions, and such assessors frequently sit in County Courts under the powers of this act.

Assets [fr. *assetz*, Nor.-Fr., i.e., *satis*, Lat.; *assez*, Fr., sufficient; in old English it was commonly written *asseth*], the property of a deceased person, which is chargeable with, and applicable to the payment of, his debts and legacies.

In commerce the term 'assets' is used to designate the stock in trade and entire property belonging to a merchant, or to a trading association with reference to bankruptcy.

Asseveration [fr. *assevero*, Lat., to affirm earnestly, fr. *severus*, serious], positive affirmation or assertion, solemn declaration.

Assewiare, to draw or drain water from marsh grounds.—*Cowel.*

Assidere, or **Assedare**, to tax equally. Sometimes used in the sense of assigning an annual rent to be paid out of a particular farm, etc.—*Mat. Paris, anno* 1232.

Assign, variously applied; generally to transfer property, or set over a right to another, or appoint a deputy; specially, to set forth, as to assign error, false judgment: to new assign was, under the old practice, a pleading by the plaintiff following the defendant's plea, wherein the plaintiff pointed out the exact grievance meant to be complained of in his declaration, and not met by the defendant in his plea. The judges are said to be assigned to take assizes. See ASSIGNMENT.

Assignation, assignment.—*Scotch Law.*

Assignatus utitur jure auctoris.—(The assignee makes use of the right of his assignor.)

Assignee, or **Assign**, a person appointed by another to do any act or perform any business; also a person who takes some right, title, or interest in things by an assignment from an assignor. They are divided into: (1) assignees by *deed*, as when a lessee of a term sells or assigns it to another; and, (2) assignees by *law*, as when property devolves upon an executor, without any specific appointment, the executor is assignee in law to the testator. Assignees in bankruptcy (now called trustees, see BANKRUPTCY) are those persons in whom the property of a bankrupt vests by virtue of their appointment.

Assignment, a transfer of the whole of a particular estate, the operative verbs being 'assign, transfer, and set over.' But other words indicating an intention to make a complete transfer will amount to an assignment. An assignee of a lease is liable for the breach of all covenants running with the land broken during the subsistence of the assignment, but he may assign over to a mere beggar to get rid of his continuing liability under such covenants; although he cannot thus escape from liability on his covenant for indemnity.

Assignment of dower, the ascertaining and setting out of a widow's portion of her deceased husband's realty for her thirds or dower.

Assignment of errors, the formal statement of the objection or error in the record complained of. See ERROR.

Assignor, a person who transfers or makes over property to another.

Assimulate, to connect highways.—*Leg. Hen. I.* c. 8.

Assisa, a law.—1 *Reeves*, c. iv. 215.

Assisa cadere, to be nonsuited, as when there is such a plain and legal insufficiency in an action, that the plaintiff cannot successfully proceed any further in it.—*Fleta*, lib. 4, c. 15; *Bracton*, lib. 2, c. vii.

Assisa cadit in juratum, the controversy is submitted to trial by jury.—*Ibid.*

Assisa continuanda, an ancient writ addressed to the justices of assize for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them.—*Reg. Orig.* 217; and *Termes de la Ley*, '*Continuance.*'

Assisor panis et cerevisiæ, the power or privilege of assizing or adjusting the weight and measure of bread and beer.—51 *Hen. III.*; *Cowel*; 2 *Reeves*, c. viii. 56. Repealed by 6 & 7 *Wm. IV.* c. 37.

Assisa proroganda, an obsolete writ, which was directed to the judges assigned to take assizes, to stay proceedings, by reason of a party to them being employed in the king's business.—*Reg. Orig.* 208.

Assisa Utrum. See ASSISE DE UTRUM.

Assise de Utrum, an obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.—*F.N.B.* 48.

Assise, See ASSIZE.

Assise of arms, 27 Hen. II. A.D. 1181.

Assise of bread, the sealed rate for the sale of bread.

Assise of darrein presentment, or last presentation; it lay when a person, or his ancestors, under whom he claims, had presented a clerk to a benefice who was duly instituted, and afterwards, upon the next avoidance, a stranger presents a clerk, thus disturbing the right of the lawful patron; upon this, the patron issued this writ, directed to the sheriff to summon an assize or jury, to inquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deforced by the defendant.—*Termes de la Ley*, 473. It was, however, abolished, and recourse had to the action of *quare impedit* (3 & 4 Wm. IV. c. 27). But since the C. P. L. Act, 1860, s. 26, no *quare impedit* can be brought, but an action may be commenced in the Queen's Bench (formerly Common Pleas) Division of the High Court of Justice.

Assise of mort d'ancestor, a writ which lay where a person's father, mother, brother, sister, uncle, aunt, etc., died, seised of land, and a stranger abated. It is abolished by 3 & 4 Wm. IV. c. 27.

Assise of novel disseisin, an action to recover property of which a party had been disseised, i.e., dispossessed after the last

circuit of the judges. It is abolished by 3 & 4 Wm. IV. c. 27.

Assise of the forest, a statute touching orders to be observed in the king's forests.—*Manwood*, 35. See *Com. Dig.*, tit. '*Assise.*'

Assiser, an officer who has the care and oversight of weights and measures.

Assises de Jerusalem, a monument of feudal jurisprudence, compiled by Gottfried of Bouillon, for the government of the Holy City after its conquest by the Crusaders. It was revised in the 13th and 14th centuries for the use of the Latin Kingdom of Cyprus. —1 *Colq. R. C. L.* s. 80, p. 86 ; 1 *Hall. Lit. Hist. Eur.* 28.

Assistance, Writ of, appears to have been first employed in the reign of James I. from that time, though in general parlance, it is said that the decree of the Court of Chancery acts only *in personam*, yet, if the possession of lands be decreed or ordered, and the defendant refuse to perform the decree, the Court directs this writ of execution to the sheriff, to enforce its decree.—*Consolid. Ord.* xxix. r. 5.

Assistant Judge of Middlesex Sessions, appointed by 7 & 8 Vict. c. 71 ; may appoint a deputy.—14 & 15 Vict. c. 55, s. 14. See 22 & 23 Vict. c. 4.

Assistant overseers, appointed by 2 & 3 Vict. c. 84, and 7 & 8 Vict. c. 101, ss. 61, 62.

Assithment [fr. *ad* and *sithe*, Sax., vice], a weregeld or compensation by a pecuniary mulct.—*Cowel.*

Assius, rented or farmed out for such an assize or certain assessed rent in money or provisions.—*Blount.*

Assize or **Assise** [fr. *assideo*, Lat., to sit together, whence *assire*, O. Fr., to set, *assis*, set, seated, sealed], a jury, who sit together for the purpose of trying a cause, or rather a court of jurisdiction which summons a jury by a commission of assize *to take the assizes.* Hence the judicial assemblies held by the Queen's commission in every county as well to take indictments as to try causes at *Nisi Prius*, are commonly termed the assizes. There are two commissions. (I.) *General*, which is issued twice a year to the judges of the High Court of Justice ; two judges being usually assigned to every circuit. See CIRCUITS. The judges have four several commissions : (1) Of *oyer* and *terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, etc. This is the largest commission. (2) Of *gaol delivery*, directed to the judges and the clerk of assize associate, empowering them to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons. (3) Of *Nisi Prius*, directed to the judges, the clerks of assize and others, by which civil causes, in which issue has been joined in one of the Divisions of the High Court of Justice, are tried on circuit by a jury of twelve men of the county in which the venue is laid. See NISI PRIUS. (4) A commission of the peace, by which all justices are bound to be present at their county assizes, besides the sheriffs, to give attendance to the judges or else suffer a fine. There used to be another Commission—that of *assize*, directed to the judges and clerk of assize, to take assizes and do right upon writs of assize brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried at *Nisi Prius.* (II.) The other division of commissions is *special*, granted to certain judges to try certain causes and crimes.—*Bracton*, lib. 3 ; 3 *Bl. Com.* 60. See now the Judicature Act, 1873, ss. 11, 16, 29, 37, 77, 93, and 99, under which, however, no very material alteration is made in the manner of holding the assizes. A cause or matter not involving any question or issue of fact may be tried and determined with consent at the assizes (s. 29).

The holding of Winter and Spring Assizes is regulated by Orders in Council issued from time to time under the Winter Assizes Acts, 1876 & 1877, and the Spring Assizes Act, 1879 (39 & 40 Vict. c. 57, 40 & 41 Vict. c. 46, and 42 Vict. c. 1).

In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the assize, though in popular language, and even in statutes, they are called the jury.

Assizes Relief Act, 1890, 52 & 53 Vict. c. 12, to relieve the Court of Assize from the trial of persons charged with offences triable at Quarter Sessions—by which Act justices of the peace are directed to bind over prosecutors to appear at the next practicable court of Quarter Sessions, in case of the prisoner being committed on a charge there triable, unless such justices think fit for special reasons otherwise to direct.

Associate, was an Officer in each of the Courts of Common Law, appointed by the chief judge of the Court, and holding his office *dum bene se gesserit* (15 & 16 Vict. c. 73) ; his duties being to superintend the entry of causes ; to attend the sittings of *Nisi Prius*, and there receive and enter verdicts ; to draw up the *posteas*, and any orders of *Nisi Prius.* The associates are now officers of the Supreme Court of Judicature (Jud. Act, 1873, s. 77), and by the Judicature (Officers) Act, 1879,

are styled 'Masters of the Supreme Court.'

Association, a writ or patent sent by the Crown to the Justices appointed to take assizes to have others (serjeants-at-law, for instance) associated with them; it is usual where a judge becomes unable to attend to his circuit duties, or dies.—*Reg. Orig.* 201. Also a public company or partnership.

Associations, Articles of, regulating the internal management of a Company under the Companies Acts. See s. 14 of the Companies Act, 1862, and "Table A" of Sched. I. of that Act, which contains a model set of articles, merely given by way of sample, and not in any way obligatory.

Association, Memorandum of, regulating the position of that company, by defining its objects, etc., in relation to the world without, and incapable of variation even by the whole body of shareholders (Ashbury Railway, etc., Co. v. Riche, *L. R.* 7 *H. L.* 653) except under the special provisions of the Companies (Memorandum of Association) Act, 1890, 53 & 54 Vict. c. 62, by which a company may within certain limits and after full notices to creditors, alter its memorandum subject to confirmation in the Chancery Division of the High Court.

Associations, Unlawful. See SOCIETIES.

Assoile [fr. *absolvere*, Lat; *absolver*, *absoiller*, *assoiller*, O. Fr.], to deliver from excommunication; to acquit or absolve.—*Staunf. Pl. Cr.* 72.

Assoilzie, to acquit a defendant, or to find a person not guilty of a crime.—*Scotch Law.*

As soon as possible. Within a reasonable time, the shortest practicable. *Hydraulic Engineering Co.* v. *McHaffie*, 4 *Q. B. D.* at p. 673.

Assuetude, custom.

Assumpsit [fr. *assumo*, Lat., to take upon oneself]. The action of *assumpsit* (which as a technical name falls into desuetude with the passing of the Judicature Acts, 1873 and 1875), lies for the recovery of damages for loss or injuries sustained by reason of the breach or non-performance of a promise, either expressed or implied, the promise not being under seal, but yet founded on a proper consideration. See PLEADING.

The ordinary division of this action was into (1) common or *indebitatus assumpsit*, brought for the most part on an implied promise; and (2) special *assumpsit*, founded on an express promise.—*Steph. Plead.*, 7th ed., 11, 13.

Assumption, the day of the death of a saint, *quia ejus anima in cœlum assumitur* (because his soul is taken into heaven).—*Du Cange.* Also a usurpation.

Assurance. See INSURANCE.

Assurances, the legal evidence of the transfer of property, called *common* assurances, by which every man's property is secured to him, and controversies, doubts, and difficulties prevented and removed. The term, which is usually confined to transfers of land, is defined in the Mortmain and Charitable Uses Act, 1888, which regulates assurances of land to charitable uses, as including 'a gift, conveyance, appointment, lease, transfer, settlement, mortgage charge, incumbrance devise, bequest, and every other assurance by deed, will, or other instrument.'

Assured, a person assured and indemnified against certain events. See INSURANCE.

Assurer, an insurer against certain perils and dangers; an underwriter; an indemnifier. See INSURANCE.

Assythment, damages recoverable by the heirs or representatives of a person killed from the person killing.

Aster, or **homo aster**, a resident.—*Brit.* 151.

Astipulation [fr. *astipulor*, Lat.], a mutual agreement, assent, and consent between parties; also a witness or record.

Astitrarius hæres [fr. *astre*, Fr., the hearth of a chimney], an heir apparent who has been placed, by conveyance, in possession of his ancestor's estate, during such ancestor's lifetime.—*Co. Litt.* 8.

Astriction [fr. *astrictio*, Lat.] **to a mill**, a servitude by which grain growing on certain lands or brought within them, must be carried to a certain mill to be ground, a certain multure or price being paid for the same.—*Jacob.*

Astrihilibet, a forfeiture of double the damage.

Astrum, a house or place of habitation.—*Cowel.*

A summo remedio ad inferiorem actionem, non habetur ingressus, neque auxilium. Fleta, l. vi.—(From the highest remedy to the lower action there is neither ingress nor assistance.] This maxim had reference to the law of real and mixed actions (now abolished by 3 & 4 Wm. IV. c. 27, s. 26, and 23 & 24 Vict. c. 126, s. 26), the rule having been that where a man resorted to the highest remedy, a writ of right, he could not afterwards avail himself of an inferior remedy.—3 *Bl. Com.* 193.

Asyle, a sanctuary or place of refuge for offenders to fly into.

Asylum [fr. Ἄσυλον, Gk., a place free from violence], a sanctuary of refuge. 2. A place set apart for the treatment and habitation of persons of unsound mind. See Lunacy Act, 1890, 53 Vict. c. 5, Part ix. replacing

the Lunatic Asylums Act, 1853, 16 & 17 Vict. c. 97, and other enactments, and post, tit. LUNATICS. Throughout the Lunacy Act, (see s. 341) the term means *public asylum*, i.e., 'an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs,' i.e., a public as distinguished from a private asylum, which latter is termed in the Act a 'licensed house,' from the keeper of it requiring a license from the Lunacy Commissioners or justices of the peace. Such houses are dealt with by Part VIII. of the Act.

Atavia, a great-grandmother's grandmother.

Atavus, the great-grandfather's or great-grandmother's grandfather; a fourth grandfather. The ascending line of lineal ancestry runs thus:—Pater, Avus, Proavus, Abavus, Atavus, Tritavus, the seventh generation in the ascending scale will be Tritavi-pater, and the next above it Proavi-atavus.—*Juv. Sat.* iii. 312.

Ategar [fr. *aeton*, Sax., to throw, and *gar*, a weapon], a hand-dart.—*Spelm.*

A tempore cujus contrarii memoria non existet. (From time of which there exists not memory to the contrary.) See 2 & 3 Wm. IV. c. 71, s. 5.

Athanation, the ancient name of the island of Thanet, in Kent.

Athe, atha, or **ath** [Sax.], an oath.—*Blount.*

Athe, or **adda**, a privilege of administering an oath in cases of right and property.—*Ibid.*

Atheism, disbelief of a God. See OATHS.

Atheling. See ÆTHELING.

Athesis fluvium, the ancient name of the river Tees, in Cumberland.

Atia, illwill. See DE ODIO ET ATIA.

Atilia, utensils, or country implements.—*Blount.*

Atonement, an agreement, union, or reconciliation. The word seems to be compounded of *at* and *one*, as it were a making at one, and thence to have acquired the meaning of suffering the pains of whatever sacrifice is necessary to bring about a reconciliation.

Atrium, a court before a house, or a churchyard.—*Cowel.*

Ats, an abbreviation denoting 'at the suit of.' It is used by a defendant in entitling the cause against him; thus C. D. (defendant), *ats* A. B. (plaintiff).

Attach [fr. *attaccare*, It., to fasten], to take or apprehend by commandment of a writ or precept. It differs from arrest, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of.—*Fleta*, lib. 5, c. xxiv. See ATTACHMENT.

Attaché, a person associated with a foreign legation.

Attachiamenta bonorum, a distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt. —*Blount.*

Attachiamenta de spinis et boscis, a privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts.—*Kenn. Par. Antiq.* 209.

Attachment, a process from a Court of Record, awarded by the judges at their discretion on a bare suggestion, or on their own knowledge, against a person guilty of a contempt, who is punishable in a summary manner. Contempts may be thus classed: (1) Disobedience to the Queen's writs; (2) Contempt in the face of a Court; (3) Contemptuous words or writings concerning a Court; (4) Refusing to comply with the rules and awards of a Court; (5) Abuse of the process of a Court; and (6) Forgery of writs, or any other deceit tending to impose on a Court.—*Leach's Hawk. P. Cr.*, c. 22, s. 33.

Attachment of Debts. By R. S. C. 1883, replacing s. 60 of the C. L. P. Act, 1854, which it follows very closely, a judgment creditor may apply to the Court or a judge to have a judgment debtor orally examined as to debts due to him (r. 1), and may either before or after such examination apply *ex parte* for an order *attaching* such debts 'owing or accruing' in the hands of the parties owing the same (garnishees), and by the same or any subsequent order the garnishee may be required to appear before the Court or a judge or an officer of the Court to show cause why he should not pay the judgment creditor the debt due from him, the garnishee, to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt (r. 2).

Attachment, foreign, a process under which the goods of foreigners found in some liberty are taken to satisfy creditors.—*Com. Dig.*, tit. '*Attachment, Foreign.*' Also a judicial proceeding, by means of which a creditor may obtain the security of the moneys, goods, or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to

answer an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. It is also called *garnishment*. As to the custom prevailing in the City of London, see FOREIGN ATTACHMENT, and consult *Brandon on For. Attach.*

Attachment of the forest, one of the three Courts formerly held in forests. The highest Court was called Justice in Eyre's seat; the middle, the Swainmote; and the lowest, the Attachment.—*Manwood*, 90, 99.

Attachment of privilege. When a person, by virtue of his privilege, calls another into that court to which he himself belongs, to answer some action as an attorney, etc. It is also a power to apprehend a person in a privileged place.—*Termes de la Ley*, 59. The 2 Wm. IV. c. 39 (commonly called the Uniformity of Process Act), virtually abolished this proceeding, and the 1 & 2 Vict. c. 110, enacted that all personal actions in any of the Superior Courts of Common Law at Westminster should be commenced by writ of summons.

Attagea, a little house.—*Blount.*

Attainder [fr. *attaindre*, Fr. (*attainder*, O. Fr.—*Roquef.*); *attingo*, Lat., which signifies the apprehension of the object of a chase], the stain or corruption of the blood of a criminal capitally condemned: it is the immediate inseparable consequence by the Common Law, sentence of death being pronounced, or of outlawry for a capital offence. The criminal then becomes dead in law, technically called *civiliter mortuus*. It differs from conviction, in that it is *after* judgment, whereas conviction is upon the verdict of guilty, but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. The consequences of attainder are forfeiture of property and corruption of blood.—4 *Bl. Com.* 380. Now abolished, see *post.*

A descendant may now trace through an attainted ancestor by virtue of 3 & 4 Wm. IV. c. 106, s. 10. The attainder of a trustee or mortgagee does not occasion the lands, etc., to escheat or be forfeited.—13 & 14 *Vict.* c. 60, s. 46.

By the 32 & 33 Vict. c. 23, it is now provided that no conviction for treason or felony shall cause attainder or forfeiture. See BILL OF ATTAINDER.

Attains du fet [Fr.], convicted of the fact, caught by it, having it brought home to one. —*Roquef.; Wedgw.*

Attaint, writ of, issued to inquire whether a jury of twelve men gave a false verdict, that so the judgment following thereupon might be reversed. This writ was abolished by 4 Geo. IV. c. 50, ss. 60, 61. A corrupt juror is punishable by fine and imprisonment, upon an indictment or information.

Attaint d'une cause [Fr.], the gain of a suit.

Attainture, legal censure.

Attal sarisin [i.e., the leavings of the *Sarasins*, *Sassins*, or *Saxons*], an old deserted mine, so called by the Cornish miners.—*Cowel.*

Attempt [fr. *tentare*, Lat.; *tenter*, *temter*, *tempter*, O. Fr., to try], an endeavour to commit a crime or unlawful act. Persons indicted for a felony or misdemeanour, may be found guilty only of an attempt to commit the same.—14 & 15 *Vict.* c. 100, s. 9.

Attendant, one who owes a duty or service to another, or depends upon another.—*Termes de la Ley*, 61.

Attendant term. Terms for years in real property are created for many purposes, e.g., to furnish money for the payment of debts, to secure rent charges or jointures, to raise portions for younger children, daughters, etc. Now, although the purpose for which the term was originally created has been satisfied or has failed, yet, not being surrendered, it continued to exist, the legal interest remaining in the trustees, to whom it was at its creation limited, or, if deceased, in their personal representatives, but the person entitled to the inheritance then became, according to equitable principle, entitled to the beneficial interest in such term, and the termor was held to be such person's trustee. This beneficial interest was subordinate to and merely attendant upon the higher estate possessed by the owner of the inheritance, and yet completely consolidated with it following the inheritance in all the various modifications and changes to which it might be subjected by act of law or arrangements of the owner. The advantage of preserving these terms and assigning them to trustees (thus preventing the legal presumption of surrender), with an express declaration that they shall attend upon the inheritance, was this: If it had at any time appeared that *prior* to the purchase or mortgage, but *posterior* to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favour of another person, to which the then trustee of the term had not been a party, and of which the purchaser or mortgagee had had no notice when he paid the purchase or mortgage-money, he would be protected against it, through the medium of the term so assigned, which being the elder title would have taken the priority in point of legal effect. Hence the expression 'protecting against mesne (middle) incumbrances.'

For the authorities and arguments upon this subject, consult *Sugden's Vendors and Purchasers*, tit. '*Assignment of Terms*.'

The act 8 & 9 Vict. c. 112, renders the assignment of satisfied attendant terms unnecessary.

Attentates, proceedings in a court of judicature, pending suit, and after an inhibition is decreed and gone out. Those things which are done after an extra-judicial appeal may be styled *Attentates*.—*Ayliffe*.

Attermining, granting time for payment of a debt.—*Blount*; 27 *Edw. I.*

Attestation, testimony, evidence, justification, the execution of a deed or will in the presence of witnesses.—2 *Bl. Com.* 307. The C. L. P. Act, 1854, s. 26 (applicable to civil actions), and the 28 & 29 Vict. c. 18, s. 7 (applicable to criminal cases), render it unnecessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may now be proved by admission, or otherwise, as if there had been no attesting witness. Wills and codicils (1 Vict. c. 26), warrants of attorney and cognovits (1 & 2 Vict. c. 110), agreements between master and seamen (Merchant Shipping Act, 1854, s. 150), and bills of sale (see *Bill of Sale*) require attestation. As to the attestation of deeds in execution of certain powers of appointment, see 22 & 23 Vict. c. 35, s. 12.

Attestation Clause, the sentence subscribed to a written instrument signed by the witnesses to its execution, stating that they have witnessed it. Such a clause (in very precise terms) is always appended to a *will* formally prepared; but it is expressly provided by s. 8 of the Wills Act, 1 Vict. c. 26, that 'no form of attestation shall be *necessary*.'

Attested copy, a verified transcript of a document.

Attesting witness, a person who has seen a party execute a deed, or sign a written agreement. He then subscribes his signature for the purpose of identification and proof at any future period. See ATTESTATION.

Attic Laws of Descent. For a notice of these, see *Hale's History*, p. 294.

Attile, the rigging or furniture of a ship. —*Fleta*, lib. 1, c. xxv.

Attinctus, attainted.

Attorn, to make attornment. See ATTORNMENT.

Attornare rem, to turn over money or goods, i.e., to assign or appropriate them to some particular use or service.—*Ken. Par. Antiq.* 283.

Attornato faciendo vel recipiendo, an obsolete writ, which commanded a sheriff or steward of a county court or hundred court to receive and admit an attorney to appear for the person who owed suit of court.—*F. N. B.* 156.

Attorney [fr. *tourné*, Fr. or fr. *attornatus*, Medieval Lat., substituted], one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. He is of two kinds.

(1) *Attorney at Law* was a public officer belonging to the Superior Courts of Common Law at Westminster, who conducted legal proceedings on behalf of others, called his clients, by whom he was retained: he answered to the Solicitor in the Courts of Chancery, and the Proctor of the Admiralty, Ecclesiastical, Probate, and Divorce Courts. An Attorney was almost invariably also a solicitor. It is now provided by the Judicature Act, 1873, s. 87, that solicitors, attorneys, or proctors of, or by law empowered to practise in, any Court the jurisdiction of which is by that Act transferred to the High Court of Justice or the Court of Appeal, shall be called 'Solicitors of the Supreme Court.' See SOLICITORS.

(2) *Attorney in Fact*, including all agents employed in any business or to do any act *in pais* for another; also a person acting under a special agency, whose authority must be expressed by deed, commonly called a power of attorney.—1 *Bac. Abr.*, tit. '*Attorney*.'

Attorney-General, a great officer of state appointed by letters-patent, and the legal representative of the Crown in the Supreme Court. He exhibits informations, prosecutes for the Crown in criminal matters and in revenue causes, and grants fiats for writs of error. In many cases (see e.g. Lunacy Act, 1890, s. 325; Public Health Act, 1875, s. 253; Public Health (Officers) Act, 1884; Public Health (Members and Officers) Act, 1885) his consent is necessary before penalties can be recovered. When the House of Lords sits in a committee of privileges, it is the duty of the Attorney-General to attend at the bar in a judicial capacity and report on the claim. He also allows applications for patents. See LETTERS PATENT; *Termes de la Ley*, 68; 4 *Reeves*, c. xxv. p. 122. The Prince of Wales appoints his own Attorney-General.

Attorney of the Wards and Liveries, was the third officer of the Duchy Court.—1 *Bac. Abr.*, tit. '*Attorney*.'

Attorneyship, the office of an agent or attorney.—4 *Reeves*, c. xxxii. p. 574.

Attornment [fr. *tourner*, Fr., to turn], the acknowledgment of a new lord on the alienation of land, and the assent or agreement of the tenant to attorn, as 'I become tenant to the purchaser.'—*Co. Litt.* 309. By 4 Anne,

c. 16, ss. 9, 10, all grants and conveyances of lands, rents, reversions, etc., are good without the attornment of the tenants, but notice of the grants must be given to the tenants, before which they are not prejudiced by the payment of any rent to the grantor, or of breach of the condition for non-payment; and by 11 Geo. II. c. 19, s. 11, attornments made by tenants to strangers claiming title to the estate of their landlord are null and void, and their landlord's possession is not affected thereby.—*Woodf. Land. and Ten.*

The '*Attornment Clause*' in a deed of mortgage is a clause whereby, for better securing the payment of the interest on the mortgage, the mortgagor attorns tenant to the mortgagee at a yearly rent equal to the interest on the mortgage, thus giving the mortgagee the right to distrain (see *Distress*) for the interest, but such attornment clauses, inasmuch as they require registration as bills of sale under the Bills of Sale Act, 1882, are coming to be considered as unsatisfactory.

Attrappe, taken or seized.

Attrebatii, the ancient name of the inhabitants of Berkshire.

Aubaine. See DROIT D'AUBAINE.

Au besoin (*in case of need*).

Auction signifies generally an increasing, an enhancement, and hence is applied to a public sale of property usually conducted by biddings, which augment the price. A spear used to be raised by the Romans, as the sign of a public auction.—*Livy*, xxiii. 37; *Smith's Dict. of Antiq.* See DUTCH AUCTION.

Auctionariæ, catalogues of goods for public sale or auction.

Auctionarii, sellers, regraters, retailers, more properly brokers.—*Jacob.*

Auctioneers, licensed agents appointed to sell property and to conduct sales or auctions. Consult *Sug. Vend. and Pur.* 34 *et seq.*, for the extent of their power and authority as to real property. They differ from brokers, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only. Auctioneers can only sell goods for ready money, but factors may sell upon credit.

An auctioneer is deemed the agent of both parties; he can bind *virtute officii* the seller and the purchaser of realty by his memorandum of the sale under the Statute of Frauds; but he is only the agent of the seller at the sale. He may sue the purchaser in his own name.

The 8 & 9 Vict. c. 15, repeals the duties of excise on sales by auction, and imposes a new duty of 10*l.* annually on auctioneers' licenses in the United Kingdom. By 15 & 16 Vict. c. 87, s. 42, persons may sell by auction under an order of the Court of Chancery, without being liable to the duty imposed by the 8 & 9 Vict. c. 15. The 6 Geo. IV. c. 81, s. 8, is repealed by s. 6, which substitutes one uniform license. Section 7 enacts that every auctioneer, before he commences any sale, shall affix, in some conspicuous part of the auction-room, a ticket or board, containing his full Christian and surname and place of residence, otherwise to forfeit 20*l.* He must produce his license on demand, or make a deposit of 10*l.* on pain of one month's imprisonment.

Auctor, a seller, or vendor.

Auctoritates philosophorum, medicorum, et poetarum sunt in causis allegandæ et tenendæ. Co. Litt. 264.—(The opinions of philosophers, physicians, and poets, are to be alleged and received in causes.)

Aucupia verborum sunt judice indigna. Hob. 343.—(Catching at words is unworthy of a judge.)

Audi alteram partem.—(Hear the other side, i.e., no man should be condemned unheard.) See *Broom's Max.*, 6th ed., 106, and *In re Pollard*, 2 *L. R. P. C.* 106.

Audience, a hearing; an interview.

Audience Court, belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity. The Dean of the Arches is the official auditor of the Audience. The Archbishop of York has also his Audience Court.—*Termes de la Ley*, 63.

Audiendo et terminando, a writ or commission to certain persons to appease and punish any insurrection or great riot.—*F. N. B.* 110.

Audit, an examining of accounts. Audit may be either detailed or administrative, and is usually both. A detailed audit is a comparison of vouchers with entries of payment in order that the party whose accounts are audited may not debit his employer with payments not in fact made. An administrative audit is a comparison of payments with authorities to pay in order that the party whose accounts are audited may not debit his employer with payments not authorized. If on either branch of audit an improper entry is discovered, the auditor *surcharges* the party whose accounts are audited, whereby the payment must be made by such party out of his own pocket. Where no fraud is suspected, however, and when there has been no negligence, it is common for the surcharge to be remitted (see, e.g., Poor Law Audit Act, 1848, 11 & 12 Vict. c. 91, s. 4), especially where the party whose accounts are audited has given his service gratuitously.

The public accounts are audited under 29 & 30 Vict. c. 39 (repealing 22 enactments in *pari materiâ*), and accounts of local authorities under the Poor Law Audit Act, 1848, and the District Auditors Act, 1879.

Auditâ querelâ defendentis [Lat.] (so called because a plaintiff cannot have it) was an equitable action which lay for a person against whom judgment had been given, and who was therefore in danger of execution, or perhaps actually in execution, when he had matter to show that such execution ought not to have issued, or should not issue against him. It was invented lest, in any case, there should be an oppressive defect of justice, where the party had a good defence, but had not any other means to take advantage of it. By the indulgence of the Courts, a summary relief upon motion has in most cases of evident oppression been granted, and this occasioned the remedy by *auditâ querelâ* to be seldom resorted to.—By *Rules H. T.* 1853, r. 79, no writ of *auditâ querelâ* was allowed, unless by rule of Court or order of a judge, and the Rules of Court under the Judicature Acts have abolished this form of proceeding altogether.

Auditor [Lat.], one who examines accounts and evidences of expenditure. See AUDIT.

Auditor of the Receipts, an officer of the Exchequer.—4 *Inst.* 107; 46 *Geo. III.* c. 1.

Auditores, the catechumens, or those newly instructed in the mysteries of the Christian religion, before admission to baptism. *Auditorium*, now called *nave*, is the place in the church where they stand to hear and be instructed.—*Blount.*

Auditores of the Imprest, officers in the Exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, etc., now performed by the commissioners for auditing public accounts.—*Pract. Exc.* 83.

Augea, a cistern for water.—*Blount.*

Augmentation, the name of a court (now abolished) erected 27 Hen. VIII., to determine suits and controversies relating to monasteries and abbey-lands.—*Termes de la Ley*, 68.

Augmentation of stipends. In order to secure a better provision for the clergy of the Church of Scotland, the Court of Session has power, under various acts of parliament, to modify or increase stipends to the clergy out of the tiends of the parish in which the minister officiates.—*Scotch Law.*

Augusta, the ancient name of London.

Augusta legibus soluta non est.—(The wife of the emperor is not exempted from the laws.)

Aula, a Court Baron.

Aula ecclesiæ, a nave or body of a church where temporal courts were anciently held.—*Eadm.* lib. 6, p, 141.

Aula Regis, or **Regia,** a court established by William the Conqueror in his own hall; it was composed of the great officers of state, resident in the palace, and followed the king's household in all his expeditions. The trial of common causes in it, was, on this account, very burdensome to the people, and accordingly the 11th chapter of *Magna Charta* thus enacted:—'*communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.*' This certain place was established in Westminster Hall, where until the Judicature Act it continued under the name of the Court of Common Pleas, or Common Bench. —*Brac. L.* 3, tr. 1, c. 7; 3 *Bl. Com.* 39. The 26th section of the Judicature Act empowers the High Court and Court of Appeal to sit at any place. See ROYAL COURTS OF JUSTICE.

Aulnager [fr. *ulna*, Lat., an ell], an ancient officer appointed by the king, whose business it was to measure all woollen-cloth made for sale, that the Crown might not be defrauded of customs and duties.—*Termes de la Ley*, 37; 2 *Steph. Com.*, 9th ed., 520.

Aumbry, Aumber [fr. *armoire*, Fr.; *armario*, *almario*, Sp.; *almer*, Germ.; *armaria*, *almaria*, m. Lat.; a cupboard], a place where the arms, plates, vessels, and everything belonging to housekeeping were kept. —*Cowel.*

Aumeen, trustee, commissioner; a temporary collector or supervisor, appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation or arrangement.—*Indian.*

Aumil, agent, officer, native collector of revenue; superintendent of a district or division of a country, either on the part of the government zemindar, or renter.—*Ibid.*

Aumildar, agent, the holder of an office; an intendant and collector of the revenue, uniting civil, military, and financial powers under the Mahomedan government.—*Ibid.*

Aumone, Service in, where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul.—*Brit.* 164.

Auncel weight, an ancient manner of weighing by the hanging of scales or hooks at either end of a beam or staff. See ANSEL. What are now called *stilliards*, which show the pounds by certain notches on a beam, are very similar to the *auncel weight.*—*Termes de la Ley*, 66.

Aunciatus, antiquated.—*Blount.*

Auncient Demesn. See ANCIENT DEMESNE.

Aunt [fr. *amita*, Lat.], the sister of one's father or mother, and a relation in the third degree, correlative to niece or nephew.

Aureney, Aurney, Aurigny, the ancient name of Alderney.

Aureo Vado, de, the ancient name of Guldeford, or Guildford, in Surrey.

Aures, a Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft. *Fleta*, lib. 1, c. xxxviii. par. 10.

Auricularius, a secretary.—*Mon. Ang.* 10.

Aurum Reginæ, queen's gold. A royal revenue belonging to every queen consort during her marriage with the king, and due from every person who has made a voluntary offering or fine to the king amounting to ten marks or upwards, for and in consideration of any privileges, grants, licenses, pardons, or other matters of royal favour conferred upon him by the king. It is due in the proportion of one-tenth part over and above the entire offering or fine made to the king, and becomes an actual debt of record to the queen's majesty by the mere recording of the fine.—2 *Steph. Com.*, 9th ed., 449, and 1 *Br. & Had. Com.* 258.

Australia (South), see 4 & 5 Wm. IV. c. 95; 1 & 2 Vict. c. 60; 5 & 6 Vict. c. 61; and 18 & 19 Vict. c. 56.

Australia (Western), see 10 Geo. IV. c. 22; and 9 & 10 Vict. c. 35.

Australian Colonies, see 13 & 14 Vict. c. 59; and 18 & 19 Vict. c. 54 and c. 56; 24 & 25 Vict. c. 44; 25 & 26 Vict. c. 11; and (as to customs duties) the Australian Colonies Duties Act, 1873, 36 Vict. c. 22.

Austurcus and **Osturcus**, a goshawk, whence a falconer keeping such kind of hawks is called *ostringer*. *Unus austurcus* used to be reserved as a rent to the lord, as may be seen in some ancient deeds.—*Blount.*

Auter, or **Autre, action pendant** [O. Fr.] (*another action pending*).

Auter, or **Autre droit**, in right of another, e.g., a trustee holds trust property in right of his *cestui que trust*. A *prochein amy* sues in right of an infant. 2 *Bl. Com.* 176.

Auterfois. See AUTREFOIS.

Authentic, an undoubted original.

Authentic act, that which has been executed before a notary or other public officer, duly authorized, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.—*Civil Law.*

Authentication, an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do.

Authentics, a collection of the novels of Justinian, made by an anonymous author. So called on account of its authority.—*Civil Law.*

There is another collection so called, compiled by Irnier, of incorrect extracts from the novels and inserted by him in the Code, in the places to which they refer.

Authorities, the citations which are made of laws, acts of the legislation, precedents, and decided cases, and opinions of text writers. See PRECEDENT.

Authority, a right; an official or judicial command; also a legal power to do an act given by one man to another. Consult *Vid. Abr.*, tit. '*Authority*,' and *Sugden on Powers.*

Autochiria, Autoctonia, Autophonia, suicide.—*Dunglison.*

Autocracy, an irresponsible monarchy, such as that of Russia.

Autograph, the handwriting of any one.

Autonomasy [fr. αὐτός, self, and ὄνομα, Gk., name], in rhetoric a word of general signification, used for the name of a particular thing.

Autonomy, political independence of a nation.

Autrefois [Fr.], formerly; at some other time.

Autrefois acquit (formerly acquitted), a plea in criminal cases; when a person is indicted for an offence and acquitted, he cannot be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and if he be thus indicted a second time, he may plead *autrefois acquit*, which will be a good bar to the indictment. The true test by which the question, whether such a plea is a sufficient bar in any particular case, may be tried, is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.—*R.* v. *Emden*, 9 *East*, 437; 14 & 15 *Vict.* c. 100, s. 28, and c. 99, s. 13.

Autrefois attaint (formerly attainted), a plea in criminal cases. Before 7 & 8 Geo. IV. c. 28, s. 4, if a man were attainted of treason or felony, whilst the attainder remained in force, he could not, with certain exceptions, be indicted for another felony, whether such other felony were committed before or after his attainder; because being already attainted, and, therefore, dead in contemplation of law, and his property forfeited, a prosecution for any other offence was considered useless. But now (7 & 8 Geo. IV. c. 28, s. 4) attainder is no bar, unless for the same offence as that charged in the indictment, and in

effect this plea is at an end.—4 *Bl. Com.* 337.

Autrefois convict (formerly convicted). Before 6 Geo. IV. c. 25, a man convicted of a clergyable felony, and who had prayed the benefit of clergy, might plead such conviction and prayer of clergy in bar of any subsequent indictment, either for the felony of which he was convicted, or for any other clergyable felony committed by him previously to his conviction. This statute restricted the benefit of the allowance of clergy to the charge upon which it was allowed, and now a previous conviction can only be pleaded in bar of any subsequent indictment for the felony of which the defendant has previously been convicted. The 7 & 8 Geo. IV. c. 28, s. 6, abolished the benefit of clergy in all cases of felony. As to the form of the plea, see 14 & 15 Vict. c. 100, s. 28.

Autre vie, *tenant pur* (tenant for another's life). An estate for the life of another is an estate of freehold, though it is the lowest or least estate of freehold which the law acknowledges. An estate for the life of another is not so great as an estate for one's own life. See 29 Car. II. c. 3, s. 12; 14 Geo. II. c. 20, s. 9; 7 Wm. IV. & 1 Vict. c. 26, ss. 3, 6; *Wms. Real Property*, 16th ed., 24.

Autumn manœuvres of troops. See MILITARY MANŒUVRES.

Auxesis [fr. αὔξησις, Gk.], a figure in rhetoric, by which anything is magnified.

Auxilium ad filium militem faciendum et filiam maritandam, an ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.—*Abolished.*

Auxilium curiæ, a precept or order of Court citing and convening a party, at the suit and request of another, to warrant something.—*Ken. Paroch. Antiq.* 477.

Auxilium facere alicui in curia regis, to become another's friend and solicitor in the Queen's Courts, an office undertaken for and granted by some courtiers to their dependents in the country.—*Ibid.* 126.

Auxilium regis, the king's aid or money levied for the royal use and the public service, as taxes granted by parliament.—1 *Bl. Com.* c. viii.

Auxilium vicecomiti, a customary aid or duty anciently payable to sheriffs out of certain manors, for the better support of their offices.—*Mon. Angl.*

Avage or **Avisage,** a rent or payment by tenants of the manor of Writtle, in Essex, upon St. Leonard's day, the 6th of November, for the privilege of pannage in the lord's woods.—*Blount.*

Avail [fr. *valoir*, Fr.; *valere*, Lat., to be worth], profit of land.

Avail of marriage [fr. *valor maritagii*, Lat.], the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage.—2 *Bl. Com.* 88.

Avails, profits or proceeds.

Aval [Fr.], surety for payment.

Avalonia, the ancient name of Glastonbury, in Somersetshire.

Avalum, a written guarantee.

Avenage, a certain quantity of oats paid by a tenant to his landlord as rent, or in lieu of some other duties.—*Blount.*

Avenor, an officer belonging to the royal stables, who provided oats for the horses.—13 *Car. II.* c. 8.

Aventurse, adventures or trials of skill at arms; military exercises on horseback.—*Brady's Append. Hist. Eng.* 250.

Aventure, or **Adventure,** a mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony.—*Co. Litt.* 391.

Aver [fr. *avoir*, Fr.; *habere*, Lat., to have; or *haber*, Sp.], a beast of the plough; money.

Aver (to) [fr. *avérer*, Fr.; fr. *verus*, Lat.], to maintain as true.

Avera, a day's work of a ploughman, formerly valued at 8*d.*—*Domesday;* 4 *Inst.* 269.

Average, a medium, a mean proportion, used in five senses:—

(1) A service which a tenant owes to his lord by doing work with his *avers.*

(2) A contribution, which merchants and others make toward their losses, when they have their goods cast into the sea, for the safety of a ship, or of the other goods and lives of persons during a tempest. It is apportioned and allotted after the rate of every man's goods carried. So, if goods insured for a voyage reach their destination, but are in some degree injured by any of the accidents insured against, this is an *average loss*, and the insurers are bound to compensate the insured in the proportion which the average loss bears to the whole insurance. In this sense average is derived fr. *haferei*, Germ., sea damage; fr. *haf*, *hav*, Scan., the open sea. This in Fr. became *avaris*, decay of merchandise; *avarie*, damage suffered by a ship. *Avaria*, Ital., is the calculation and distribution of the loss arising from goods thrown overboard.—*Wedgw.* See GENERAL AVERAGE. As to 'particular average,' see *Arnould on Marine Insurance*, 6th ed., 927 *et seq.*

(3) Also a small duty paid to masters of ships, when goods are sent in another man's

ship, for their care of the goods over and above the freight.

(4) Stubble, or remainder of straw and grass left in cornfields after harvest. In Kent it is called *gratten*, and in other parts *roughings*.

(5) Average prices, such as are computed on all the prices of any articles sold within a certain period or district. See e.g., Corn Returns Act, 1882, 45 & 46 Vict. c. 37, s. 9.

A verbis legis non est recedendum. 5 Co. 118.—(From the words of the law there should not be any departure.) This maxim directs the construction to be put upon acts of parliament, against the express letter of which the Courts will not sanction any interpretation, for the meaning of the Legislature cannot be so well explained as by its own direct words, since *index animi sermo* (language conveys the intention of the mind), and *maledicta expositio quæ corumpit textum* (an exposition which corrupts the text is bad).—4 *Co.* 35.

Aver-corn, a reserved rent in corn paid to religious houses.—*Blount.*

Averia, cattle, which were the principal possession in early times.—*Spelman.* Also chattels generally.

Averia carrucæ, beast of the plough exempt from distress, if other sufficient goods can be found to be distrained upon. See DISTRESS.

Averia elongata, cattle eloigned, i.e., carried off.

Averiis captis in withernam, a writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff.—*Reg. Orig.* 82.

Averium, the best live beast due to the lord as a heriot on his tenant's death.—2 *Bl. Com.* 424; 1 *Steph. Com.*, 9th ed., 633.

Aver-land, that which tenants ploughed and manured for the proper use of a monastery or the lords of the soil.—*Mon. Angl.*

Averment [fr. *verificatio*, Lat.], an advancement or affirmation of any new matter in a pleading, and when new matter was introduced the pleading concluded with a verification, except in the anomalous case of the general plea of bankruptcy under 6 Geo. IV. c. 16. Verifications or averments were of two kinds: *common* and *special.* Common were applied to ordinary cases, and were in the following form:—'And this the plaintiff (or defendant) is ready to verify.' Special were used where the matter pleaded was intended to be tried by record or by some other method than a jury. They were in the following forms:—'And this the plaintiff (or defendant) is ready to verify, by the said record,' or, 'And this the plaintiff (or defendant) is ready to verify, when, where, and in such manner as the Court here shall order, direct, or appoint.' See PLEADING.

Aver-penny (or *average penny*), money paid towards the king's averages or carriages, and so to be freed thereof.—*Rastal.*

Averrare, a duty required from some customary tenants, to carry goods in a waggon or upon loaded horses.—*Blount.*

Avers, draught cattle; cart-horses.

Aver-silver, a custom or rent formerly so called.—*Cowel.*

Avia, a grandmother.

A vinculo matrimonii (*from the chain of wedlock*). It was a total divorce obtained from the Ecclesiastical Court on some canonical impediment existing *before* marriage and not arising *afterwards*, for the marriage was declared void, as having been absolutely unlawful *ab initio*, and the parties were, therefore, separated, *pro salute animarum* (for the safety of their souls), the issue (if any) were illegitimate, and the parties might contract another marriage.

Though this divorce could not have been obtained from the Ecclesiastical Court, where the marriage was not void *ab initio*, yet it was frequently granted before the establishment of the 'Divorce Court' in 1857 on the ground of adultery by a private act of parliament. See DIVORCE.

Avisamentum, advice or counsel.—*Blount.*

Avitious [fr. *avitus*, Lat.], left by a person's ancestors.

Avizandum. In the Scotch Courts the judges are said to 'make avizandum' with a case when time is taken to consider judgment.

Avocat, a French barrister, or advocate.

Avoidance [fr. *vuide, vide*, Fr., empty, wide, free from], when a benefice is void of an incumbent, in which sense it is opposed to plenarty.—*Jacob.* Also the evitation, by new matter, of an opponent's pleading. See CONFESSION AND AVOIDANCE.

Avoidance of a Deed. The rendering void or of no effect of a deed, either on account of defective execution or otherwise.

Avoir-de-poise, Avoirs-de-pois, or **Aver-du-pois** [O. Fr.] (*to have full weight*), a certain method of weighing goods, allowing 16 ounces to the pound, whilst Troy-weight allows but 12.

Avona, the ancient name of Bungay, in Suffolk, and Hampton Court.

Avonæ Vallis, the ancient name of Avondale, or Oundale, in Northamptonshire.

Avoucher, the calling upon a warrantor to fulfil his undertaking.

Avoué, a French attorney.

Avow. See ADVOW.

Avowant, one who makes an avowry.

Avowee. See ADVOWEE.

Avowry, or **Advowry,** was a pleading in the action of replevin, which stated the nature and merits of the defence, and justified or avowed taking the distress in his (the defendant's) own right, which, if established, would entitle him to a judgment *de retorno habendo.* An avowry was in the nature of a declaration. See 11 Geo. II. c. 19, s. 22.

Avowterer, Avouterer, an adulterer. The crime being called *Avowtry.—Termes de la Ley.*

Avulsion [fr. *avulsio,* Lat.], lands torn off by an inundation or current from property to which they originally belonged, and gained to the estate of another; or where a river changes its course, and instead of continuing to flow between two properties, cuts off part of one and joins it to the other. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion,* i.e., where an addition is insensibly made to a property by the gradual washing down of the river, for such an addition becomes the property of the owner of the lands to which it is made.

Avunculus, an uncle by the mother's side.

Avunculus magnus, a great-uncle.

Avus, a grandfather.

Await [fr. *awaiti,* Wall., to watch, *waiti,* to look], waylaying, a lying in wait to execute some mischief.—13 *Rich. II.* st. 2.

Award [the primitive sense of *ward* is shown in the It. *guardare,* Fr. *regarder,* to look. Hence, Prov. Fr. *eswarder* (answering in form to award), to inspect goods, and, incidentally, to pronounce them good and marketable; *eswardeur,* an inspector.—*Hecart.* An award is accordingly, in the first place, the taking a matter into consideration and pronouncing judgment upon it; but in later times the designation has been transferred exclusively to the consequent judgment.—*Wedgw.*], a document containing the determination of commissioner, under an Inclosure Act, or other public statute; also an instrument embodying an arbitrator's decision on a matter submitted to him. It must follow the submission, but need not be necessarily in writing, unless prescribed. Joint arbitrators should execute the award at the same time and in the presence of each other.—4 *E. & B.* 44. An award is generally considered as published as soon as the arbitrator has done some act whereby he becomes *functus officio,* and has declared, and can no longer change, his final mind. As soon as the award is executed, notice thereof should be given to all the parties that it is made and ready to be delivered: and if the submission direct that it be delivered to the parties by a certain day, in order to be valid it must be so delivered accordingly. It is usual for an arbitrator to keep the award until his costs are paid. The award must be duly stamped.

Any words expressive of a decision are an award. Recitals are unnecessary. The award must be entire, final, on all the matters referred, or it will be void *in toto;* unconditional, but it may be alternative without reservation or delegation, except as to ministerial acts; certain, mutual, possible, and consistent, without palpable mistake; when partly good and partly bad, the good part, if separable from the bad, will be valid.

A valid award is a final and conclusive judgment as between the parties, on all matters referred by the submission, and a Court has not any power to alter or amend it.

The grounds for setting aside an award are these:—

(1) When an arbitrator or umpire has misconducted himself, or the arbitration or award has been improperly procured (Arbitration Act, 1889, s. 11);

(2) When the award discloses a manifestly mistaken decision in law or fact;

(3) When the award is a nullity;

(4) When it is not final;

(5) When it is uncertain;

(6) When the arbitrator has exceeded his authority:

(7) When a party or a witness is in fault, or new matter has been discovered.

See ARBITRATION; REFEREE.

Away-going or **Way-going crops,** crops sown during the last year of a tenancy, but not ripe until after its expiration. The right which an out-going tenant has to take an away-going crop is sometimes given to him by the express terms of the contract, but, where that is not the case, he is generally entitled to do so by the custom of the county: such custom or usage has been held reasonable and valid, and to apply equally to tenants by parol agreement as well as by deed or written contract of demise, and this for the benefit and encouragement of agriculture; but modern farming agreements frequently bar any claim under it, and substitute a claim to compensation.

Awm, Aums, or **Awame,** a measure of Rhenish wine containing forty gallons, mentioned in some old statutes.—*Blount.*

Awnhinde. See THIRD-NIGHT-AWNHINDE.

Axelodunum, the ancient name of Hexham.

Axiom, an indisputable truth.

Ayant cause, a receiver; also a successor; or one to whom a right has been assigned,

either by will, gift, sale, exchange, or the like.—*French Law.*

Aye, an affirmative particle synonymous with *yea* or *yes*.

Ayle, a grandfather. See AIEL.

Azaldus, a poor horse or jade.—*Blount.*

Azure, bright blue, sometimes called *Inde*, from the sapphire, which is found in the East. Heralds who blazon by planets call it *Jupiter*, and when the names of jewels are employed, it is called *Sapphire*. Engravers represent it by an indefinite number of horizontal lines.—*Heraldic Term.*

B.

Baccinium, or **Bacina**, a basin or vessel to hold water for washing the hands. There was formerly a service of holding the basin, or waiting at the basin on the day of the king's coronation.

Bachelacanæ Sylvæ, the woods of Bagley.

Bacheleria, commonalty or yeomanry, in contradistinction to baronage.—*Old Records.*

Bachelor [a word of uncertain etymology; the most probable derivation seems to be from *bachgen*, Wel., a boy.—*Wedgw.*], a man who takes the degree of apprentice or student of arts (B.A.) preliminary to that of master (M.A.), at the universities. Also, an unmarried man.

Backberinde, Backverinde, or **Backberend**, bearing upon the back, or about a man. Where a thief is apprehended with the things stolen in his possession, also called being taken with the *mainour*, as having the goods in his hand.—2 *Inst.* 188. It was one of the four circumstances wherein a forester might have arrested the body of a trespasser in a forest; viz., *dog-draw*, i.e., drawing after a deer that he has hurt; *stable-stand*, i.e., at his standing with a knife, gun, bow, or greyhound, ready to shoot or course; *back-berend*, i.e., carrying away upon his back the deer which he had killed; *bloody-hand* (redhanded), i.e., when he had shot or coursed, and was imbrued with blood.—4 *Inst.* 294.

Back-bond, a deed, which, in conjunction with an absolute disposition, constitutes a trust. It expresses the nature of the right actually held by a person to whom the disposition is made. It is equivalent to the English deed of trust.—*Scotch Term.*

Backgammon, a lawful game with dice.—13 Geo. II. c. 19, s. 9.

Backing *a warrant* of a justice of the peace. Where a warrant which has been granted in one jurisdiction is required to be executed in another, as, where a felony has been committed in one county, and the offender is lurking in another county, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorses or writes his name on the back of it, and then gives authority to execute the warrant in such other county. See 11 & 12 Vict. c. 42, ss. 11—15, and cap. 43; and 31 & 32 Vict. c. 107.

Backside, a term formerly used in conveyances and even in pleading; it imports a yard at the back part of or behind a house, and belonging thereto.

Backwardation, a consideration given to keep back the delivery of stock when the price is lower for time than for ready money.—*Stock Exchange.*

Baco, a bacon hog, used in old charters.

Bactile, a candlestick.

Bad (in substance). The technical word for unsoundness in pleading.

Badger [fr. *baggage*, Fr., a bundle, whence *bagagier*, a carrier of goods; or fr. *bladier*, Fr., a corn-dealer.—*Wedgw.*], a person who buys corn or victuals in one place, and carries them to another to sell and make profit by them. The 5 Eliz. c. 12, empowered magistrates to license badgers for one year, upon their entering into certain recognizances. The 7 & 8 Vict. c. 24, abolished the offence of badgering, and repealed the statutes passed in relation to it, as being pernicious and in restraint of trade.

Badiza, an ancient name of Bath, in Somersetshire.

Badonicus mons, an ancient name of Barnes Down, near Bath.

Bag [fr. *balg*, *bolg*, *bag*, Gael., a wattel], a certain and customary quantity of goods and merchandise in a sack.—*Lex. Merc.*

Baga, a bag or purse. See PETTY BAG OFFICE.

Bagatelle. A billiard license is required for a public bagatelle board, by 8 & 9 Vict. c. 109, s. 11. See BILLIARDS.

Bagavel. Edward I. granted to the citizens of Exeter, by charter, the collection of a certain tribute or toll upon all wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city, which was commonly called in old English, *begavel*, *bethugavel* and *chipping-gavel*.—*Antiq. of Exeter.*

Bahadum, a chest or coffer.—*Fleta*, lib. 2, c. xxi.

Bail [fr. *bailler*, Fr., to hand over], to set at liberty a person arrested or imprisoned, on security being taken for his appearance

on a day and a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming (that is, become bail for his due appearance when required), in order that he may be safely protected from prison. Bail and mainpernors are often confounded, but there is this marked distinction between them:—*mainpernors* are merely a person's sureties who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers, to whose custody he is committed, and therefore, they may take him upon a *Sunday* and confine him until the next day, and then render him to the proper prison. The word 'bail' is never used with a plural termination.

Bail is either in civil or criminal cases.

In civil cases, there was, before the abolition of mesne process by the Debtors Act, 1869:—

(1) Common bail, or bail below, given to the sheriff, after arresting a person, on a bail bond, entered into by two sureties, on condition that the defendant appear at the day and in such place as the arresting process commands. (1 & 2 Vict. c. 110, s. 4.)

(2) Special bail, or bail above, or bail to the action. This was bail given by persons who undertook generally, after appearance of a defendant, that if he should be condemned in the action, he should satisfy the debts, costs, and damages, or render himself to prison, or that they would do it for him.

In civil cases, there appear still to survive—

(3) Bail on an attachment. When a defendant is arrested upon a writ of attachment, he is brought before a Court or a judge and sworn to answer interrogatories, and then committed, unless, by leave of a Court or a judge, he enter into a recognizance with sureties, for his appearance in Court from day to day, to answer interrogatories concerning such matters as may be objected against him. An attachment for non-payment of money or non-performance of an award is not bailable.

(4) Bail in actions of ejectment brought by landlords, see 15 & 16 Vict. c. 76, ss. 213, 215, and 216.

By 32 & 33 Vict. c. 38, s. 1, it was provided that persons authorized to take affidavits in Common Law Courts might also take bail.

In the Chancery Division of the High Court, equitable bail can be given by a defendant upon his being arrested on a writ of *ne exeat regno*, and the sheriff may take bail in cases of attachment for not appearing or answering.

Bail in criminal cases is given for the appearance of the party bailed to take his trial, or to attend a further examination of a charge against him.

In all cases of felony, and in certain misdemeanours, the magistrates may take bail at the time of the examination; and in all cases where a person charged with an indictable offence is committed to prison to take his trial for the same, it is lawful at any time afterwards, and before the first day of the sessions or assizes at which he is to be tried, for the magistrate who signed the warrant for his commitment to admit him to bail. The justices, however, have no power to admit any person to bail for treason, nor may bail in that case be allowed, except by order of a secretary of state or by the Queen's Bench Division of the High Court, or a judge thereof in vacation, while, on the other hand, they are bound to admit to bail in all cases of misdemeanour, except such as the act of 11 & 12 Vict. c. 42, s. 23, particularly enumerates; and as to all felonies, as well as to the misdemeanours so enumerated, they have a discretionary power either to admit to bail, or to commit to prison.

The Bill of Rights, 1 W. & M. sess. 2, c. 2, expressly enacts that excessive bail ought not to be required.

By s. 5 subs. 2 of the Coroners Act, 1887, coroners may admit to bail persons charged with manslaughter upon an inquisition before them, and by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 227, a borough constable may admit to bail persons charged with petty misdemeanours and brought into his custody, if a justice of the peace be not sitting.

The Queen's Bench Division of the High Court, or any judge in time of vacation, may admit to bail for any crime whatever.

Bailable. An arresting process is said to be bailable when bail can be given, and the person arrested may obtain his liberty in consequence. See BAIL.

Bail-bond, an instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested and conditioned for his causing special bail to be put in for him in the court out of which the arresting process issued.

Bail Court, sometimes called the Practice Court, was an auxiliary of the Court of Queen's Bench. It heard and determined ordinary matters, and disposed of common motions.—Consult *Chit. Arch. Prac.*

Bailee, a person to whom goods are entrusted for a specific purpose.

Bailee, Larceny by, punishable in the same manner as larceny, although the bailie

'shall not break bulk, or otherwise determine the bailment,' by 24 & 25 Vict. c. 96, s. 3, replacing the repealed 20 & 21 Vict. c. 54, s. 4; and as to special punishment of fraudulent bailies, being bankers, etc., see 24 & 25 Vict. c. 96, s. 75 *et seq.*

Bailies, magistrates of burghs in Scotland.

Bailiff, a keeper or protector, an officer who puts in force an arresting process, or who is employed to distrain for rent, for which employment the certificate of a County Court Judge is required under the Law of Distress Amendment Act, 1888.

Bailiffs to execute County Court processes are appointed under s. 33 of the County Court Act, 1888, to assist one or more 'high bailiffs' for each court. 2. A land-steward. There are several kinds of bailiffs, whose offices and employments greatly differ from one another, yet they agree in that the keeping or protection of something belongs to them all.—*Encyc. Lond.*

Bailiff-errant, a bailiff's deputy. See OUTRIDER.

Bailiwick [fr. *baillie*, Fr., and *wic*, Sax.], the jurisdiction of a bailiff. A county, in respect of the sheriff's jurisdiction therein. A liberty exempted from a sheriff, over which a bailiff is appointed by the lord of the liberty or franchise, with such powers within his precinct as an under-sheriff exercises under a sheriff.—*Woods. Inst.* 206.

Bailment [fr. *bailler*, Fr., to deliver], a compendious expression to signify a contract resulting from delivery; perhaps best defined as a 'delivery of a thing in trust for some special object or purpose, and upon a contract express or implied, to conform to the object or purpose of the trust.'

In the celebrated case of *Coggs* v. *Bernard* (Ld. Raym. 909; 1 Sm. L. C.), Lord Holt divided bailments thus:—

(1) *Depositum*, or a naked bailment of goods, to be kept for the use of the bailor.

(2) *Commodatum*. Where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him.

(3) *Locatio rei*. Where goods are lent to the bailee to be used by him for hire.

(4) *Vadium*. Pawn or pledge.

(5) *Locatio operis faciendi*. Where goods are delivered to be carried, or something is to be done about them, for a reward to be paid to the bailee.

(6) *Mandatum*. A delivery of goods to somebody, who is to carry them, or do something about them, *gratis*.

Bailments are also divisible into three kinds:—(1) Those in which the trust is exclusively for the benefit of the bailor, or of a third person, when the bailee is liable for gross negligence only. (2) Those in which the trust is exclusively for the benefit of the bailee, who is then bound to the very strictest diligence; and (3) Those in which the trust is for the benefit of both parties, or of both or one of them and a third party: when the bailee must exercise an ordinary and average degree of diligence. The first embraces deposits and mandates; the second, gratuitous loans for use, and the third, pledges or pawns, and hiring and letting to hire.—*Story on Bailments; Chitty on Contracts.*

Bailor, or **Bailer**, a person who commits goods to another person (the bailee) in trust for a specific purpose.

Bail-piece, a piece of parchment containing the names of special bail, with other particulars, which, being signed by a judge, was filed in the court in which the action was pending, and notice of the bail having justified was then given to the opposite party.

Bair-man, a poor insolvent debtor, left bare and naked, who was obliged to swear in Court that he was not worth more than five shillings and fivepence.—*Obsolete.*

Bairns' part, a third part of a deceased's free movables, debt deducted, if his wife survive, and a half if she do not, due to his children.—*Scotch Law.*

Baiting Animals. Procuring them to be worried by dogs.—Punishable on summary conviction, under 12 & 13 Vict. c. 92, s. 3.

Bajardour, a bearer of any weight or burden.—*Old Records.*

Bakehouse Regulations Act, 1863, 26 & 27 Vict. c. 40, repealed and replaced by the Factory and Workshop Act, 1878. See FACTORY.

Balance, that which expresses the difference between the debtor and creditor sides of an account; also used commercially to express the difference between the value of the exports from, and imports into a country. The balance is said to be favourable, when the value of the exports exceeds that of the imports, and unfavourable when the value of the imports exceeds that of the exports.—*McCull. Comm. Dict.*

Balance-sheet, a statement of account or business between merchants, partners, or others.

Balance of trade, the difference between the value of the exports from and imports into a country.—*McCull. Comm. Dict.*

Balcanifer, or **Baldakinifer** [fr. *baldanum*, low Lat.], the standard-bearer of the Knights Templars.

Balconies [fr. *bâla khaneh*, Pers., an upper chamber], small galleries of wood or stone on the outside of houses. The erection of them

is regulated in London by the Building Acts. —*Woolrych's Met. Bldg. Act.*

Bale [fr. *bal*, Sw.; *balla*, Ital.; *balle*, *bal*, Fr.], a pack or certain quantity of goods or merchandise, wrapped or packed up in cloth and corded round very tightly, marked with figures corresponding to those in the bills of lading for the purpose of identification.

Balenger, a barge or water-vessel, a man-of-war.

Baleuga, a territory or precinct.

Balk [fr. *valicare*, Ital., to pass over.—*Skinner*], a ridge of land left unploughed between the furrows, or at the end of a field.—*Encyc. Lond.*

Ballare, to dance.—*Spelm.; Fl.* l. 2, c. 87.

Ballastage, a toll paid for the privilege of taking up ballast from the bottom of a port or harbour.

Balliers (*inutilis sarcina*), or bail-load (*baglæs*, Prov. Dan.), persons who, standing on a bulk or ridge of ground, give notice of something to others.

Balliva, a bailiwick or jurisdiction.—*Old Records.* See BAILIWICK.

Ballivo Amovendo, an ancient writ to remove a bailiff from his office for want of sufficient land in the bailiwick.—*Reg. Orig.* 78.

Ballot [fr. *balla*, It.; *balle*, Fr.], a little ball or ticket used in giving votes.

Ballot, to vote a person into an office by means of little balls which are put into either side of a box privately, according to the inclination of the voter, or by writing the name or names of the candidates upon small pieces of paper and rolling them up, so that they cannot be read, which are put into a box, and, when the time limited for the voting is over, are taken out one by one by an impartial person. As to ballots for the militia (now suspended), see MILITIA.

By the Ballot Act, 1872, 35 & 36 Vict. c. 33, voting by ballot was introduced into Parliamentary and Municipal Elections, the form of voting being by making a cross opposite the name of that one of the candidates, whose names are printed on a 'ballot paper,' whom the voter votes for. See *Woodward* v. *Sarsons*, *L. R.* 10 *C. P.* 733. The act was originally limited to expire in 1880, but has since been continued annually by 'Expiring Laws Continuance Acts.'

Balnearii, stealers of the clothes of persons bathing in the public baths.—*Civil Law.*

Ban, or **Bann** [Teut.], a proclamation or public notice, or summons or edict, whereby a thing is commanded or forbidden. It is most especially used to signify the publication of intended marriages. By 4 Geo. IV. c. 76, s. 2, all banns of matrimony shall be published in an audible manner in the parish church or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published (see 6 Geo. IV. c. 92, and 11 Geo. IV. & 1 Wm. IV. c. 18), of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubric prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage during the time of morning service or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published) immediately after the second lesson. But the spiritual judge, by a license, may dispense with the formality of publication. If any persons be married without either publication of banns or license, the marriage will be void, and the officiating minister is liable to penal servitude.—26 *Geo. II.* c. 33.

Banc (or **Banco**), **Sittings in** [fr. *bancus*, Lat., a seat or bench of justice. Thus *Bancus Reginæ* or *Bank la Reine*, if the Queen's Bench. *Bancus communium Placitorum*, or *Bench le Common Pleas*, is the Court of Common Pleas, or the Common Bench], the sittings of a Superior Court of Common Law as a full Court as distinguished from the sittings of the Judges at Nisi Prius or on Circuit. Such sittings might be held out of term as well as in term (1 & 2 Vict. c. 32, s. 2, and C. L. P. Act, 1854, s. 95). The business of the Courts in banco is transferred to Divisional Courts of the High Court of Justice (Jud. Act, 1873, ss. 40, 41). [See DIVISIONAL COURT.]

Bancale, a covering of ease or ornament for the bench or other seat.

Banco [Ital.]. See BANC. A seat or bench of justice; also, in commerce, a word of Italian origin signifying a bank.

Bancus Superior, abbrev. *Banc. Sup.* [Lat.], the Upper Bench; the King's Bench was so called during the Protectorate.

Bandit, a man outlawed, put under the ban of the law.

'I will be the *bane* of such a person' is a popular saying. When a person receives a mortal injury by anything, such thing is his *bane*. He who is the cause of another's death, is *le bane*, i.e., malefactor.

Baneret, or **Banneret** [Fr.], a knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honourable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with sup

porters. They rank next to barons; and were sometimes called *vexillarii.*

Bani, deodands.

Banishment, an expulsion from the realm. For instances of it in English Law, see Roman Catholic Relief Act, 10 Geo. IV. c. 7, s. 34; as to Jesuits, and the Alien Act, 11 Vict. c. 20, revived by the Prevention of Crime (Ireland) Act, 1881, s. 15; and see also TRANSPORTATION.

Bank. Commercially it is a place where money is deposited for the purpose of being let out to interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it. See also JOINT-STOCK BANKS and LIMITED LIABILITY, and consult *Grant on Banking.*

The three great national banks are (1) the Bank of England, regulated by 3 & 4 Wm. IV. c. 98; 7 & 8 Vict. c. 32; and 19 & 20 Vict. c. 20, and other statutes, which conducts the whole banking business of the British Government, acting not only as an ordinary bank, but as a great engine of state. As to its origin see 3 *Hall, Const. Hist.* 135. (2) The Bank of Scotland, established by Wm. III. Parl. 1, s. 5; 44 Geo. III. c. 23; 9 Geo. IV. c. 65. (3) The Bank of Ireland, as to which, see the 35 & 36 Vict. c. 5.—*McCull Comm. Dict.*

Bank-book, a book kept by a customer of a bank, showing the state of his account with it; otherwise termed a 'Pass Book.'

Bank-credits, accommodations allowed to a person on security given to a bank, to draw money on it to a certain extent agreed upon.

Banker, one who receives money in trust to be drawn again as the owner has occasion for it. As to embezzlement and frauds by bankers, see 24 & 25 Vict. c. 96, ss. 75, 76, replacing the repealed 7 & 8 Geo. IV. c. 29, and 20 & 21 Vict. c. 54.

Bankers' Books Evidence Act, 1879, 42 Vict. c. 11, an act whereby a copy of an entry in a banker's book is made *primâ facie* evidence of such entry, upon proof that the copy has been checked by comparison with the entry.

Bankers' cash notes, formerly called goldsmith's notes, because bankers were originally goldsmiths. Written promises given by bankers to their customers as acknowledgments of having received money for their use. They are payable to bearer on demand and considered as money, and transferable from one person to another by delivery. They are now seldom made except by country bankers, their use having been superseded by the introduction of cheques.

Bank of England. See BANK.

Bank-notes, or **Bank-bills**, written or printed promises for money, to be paid by a banking company. They are uniformly made payable on demand. They are not like bills of exchange, mere securities or documents for debt, nor are they so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind, and, on payment of them, whenever a receipt is required, it is always given as for money, not as for securities or notes. Per Lord Mansfield, *Miller* v. *Race*, 1 *Burr.* 457. *Bank of England notes* were made a legal tender by the 5th sect. of 3 & 4 Wm. IV. c. 98, everywhere, except at the Bank and its branches, for all sums above five pounds.

Bankrupt [fr. *bancus*, or *banque*, the table or counter of a tradesman, and *ruptus*, Lat., broken, denoting thereby one whose shop or place of trade is broken or gone]. A debtor who does certain acts, tending to defeat or delay his creditors, may be adjudged bankrupt, and so made liable to the bankruptcy laws. Before the 'Bankrupcty Act, 1861' (24 & 25 Vict. c. 134), traders only were liable to be made bankrupts.

The Bankrupt Law is distinguished from the ordinary law between debtor and creditor, as involving these three general principles:—(1) a summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.

The law of Bankruptcy, after having been materially altered in 1849, 1861, and 1869, is now contained in the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, and the General Rules made under s. 127 thereof, as amended by the Bankruptcy Act, 1890, 53 & 54 Vict. c. 71. See *Act of Bankruptcy*, ante, and *Robson*, *Williams*, or *Baldwin on Bankruptcy.*

Bankruptcy, Court of. The Bankruptcy Act, 1883, ss. 92—4, gives jurisdiction in bankruptcy to the London Bankruptcy Courts, which it consolidates with the Supreme Court and the County Courts.

Bankruptcy (Ireland) Act. See 35 & 36 Vict. c. 58, which repeals divers previous enactments; and the 'Debtors' Act (Ireland), 1872' (35 & 36 Vict. c. 57).

Bankruptcy Notice. A notice to pay a judgment debt for any amount, non-compliance with which notice within a limited time amounts, by s. 4 (g) of the Bankruptcy Act, 1883, to an 'act of bankruptcy.'

Bank-stock, shares in a bank, especially in the Bank of England.

Banneret. See BANERET.

Banning, an exclamation against, or cursing of another.

Bannire ad placita, ad molendinum, to summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

Bannitus, or **Banniatus**, an outlaw; a banished man.

Bannock, a thick cake of oatmeal, being a perquisite of a mill-servant in thirlage.

Banns of marriage. See BAN.

Bannum, or **Banleuga**, the utmost bounds of a manor or town.—*Seld. Hist. of Tithes*, 75.

Banyan, a Hindoo merchant or shopkeeper. The word is used in Bengal to denote the native who manages the money concerns of a European, and sometimes serves him as an interpreter.

Baptism [fr. Βάπτισμα, Gk.]. See BIRTHS. By the 35 & 36 Vict. c. 36, it is rendered unlawful to demand any fee for the celebration of registration of baptism.

Bar, (1) a partition running across the courts of laws, behind which all outer-barristers and every member of the public must stand. Solicitors, being officers of the Court, are admitted within it: as are also queen's counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. Parties who appear in person also are placed within the bar on the floor of the Court. (2) The profession of barrister, who is said to be 'called to the bar.' See BARRISTER.

Bar Committee. An elected body formed in 1883, consisting of the Attorney and Solicitor-General, and 48 practising barristers (see that title), of whom 12 must be queen's counsel and 24 members of the outer bar, formed by the terms of its constitution 'to collect and express the opinions of the members of the bar on matters affecting the profession and to take such action thereon as may be deemed expedient.' The constituents are *the whole bar*, the voting being by voting papers which are sent to subscribers only, but may be had by any barrister on application to the Secretary. The members are elected for three years. One-third retire from office on the second Saturday in Trinity Sittings. Casual vacancies are filled up by the Committee. Each barrister is requested, but not required, to subscribe half a guinea yearly. The number of subscribers, which has never been very large, is at present (November, 1891) about 300. The number of barristers who voted at the last general election was about 750. The Committee has issued reports on (amongst others) the following subjects:—The Audience of Counsel in Chambers, Court Fees, The District Courts Bill, The Rules of Court, The Libraries, Motions in the Chancery Division, The working of the Circuit Arrangements, The arrangement of work in the Chancery Division, The International Congress on Commercial Law held at Antwerp in September 1885, Land Transfer, Practice and Procedure in Chambers in the Chancery Division, The Land Transfer Bills of 1887-8, The Sittings of the Queen's Bench Division, Interrogatories and Discovery, The County Courts Consolidation Bill, The Criminal Evidence Bill, The Sale of Goods Bill, and the Trustees Bill, and has made numerous representations to the Lord Chancellor and Judges on matters affecting the interests of the profession. These and other reports are sent to subscribers. An annual meeting of the whole Bar is held under the auspices of the Committee, but has generally been but thinly attended. The Committee has on frequent occasions discussed matters such as Retainers (see that title) affecting the relations between solicitors and barristers, as well as matters affecting the interests of the legal profession generally with Committees of the Council of the Incorporated Law Society (see that title). The Committee being broadly and absolutely representative, it is reasonable that every practising barrister should take a part in the elections, even though he may not see his way to becoming a subscriber.

The address of the present (November 1891) Honorary Secretary is—

S. H. LOFTHOUSE,
Farrar's Building,
Temple.

Bar-fee, a payment taken by a sheriff from an acquitted prisoner.

Bar, Plea in, a pleading showing some ground for barring or defeating an action at Common Law. A plea in bar was therefore distinguished from all pleas of the dilatory class, as impugning the right of action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ or declaration. It was, in short, a substantial and conclusive answer to the action. It followed from this property, that in general, it must either deny all, or some essential part of the averments of fact in the declaration, or admitting them to be true, allege new facts which obviated or repelled their legal effect. In the first case the defendant was said, in the language of pleading, to *traverse* the matter of the declaration; in the latter, to *confess and avoid* it. Pleas in bar were consequently divided into (1) pleas by way of traverse, and (2) pleas by confession and avoidance.—*Step. Pled.* 57.

In Equity, a plea in bar was a defence, resorted to when there was no defect apparent on the face of the plaintiff's bill, alleging affirmative matter, and reducing the case to a particular point, seeking to displace the plaintiff's equity. See now, DEFENCE.

Bar, Trial at, the trial of a cause or prisoner before the Court itself instead of at *Nisi Prius*. It is entirely discretionary with the Court to grant it at all, unless the Crown be actually and immediately interested, when the Attorney-General may demand it as of right. It is moved for after issue joined, and ten days' notice of trial must be given to the parties after notice to the masters of the Court. A special jury of the county in which the venue is laid, is impannelled, unless the Court imposes the terms of trying by a Middlesex or Surrey jury, or the parties consent to the contrary. A celebrated trial at bar—of one Arthur Orton for perjury, in swearing that he was Sir Roger Tichborne—took place in 1873. In civil matters trials before more judges than one may be held before Divisional Courts, if the Court think them unsuited for trial by a single judge (Jud. Act, 1873, s. 40).

Barber-chirurgeons, a corporation of London, instituted by Edw. IV. The barbers were separated from the surgeons by 18 Geo. II. c. 15, and the latter were erected into a Royal College of Surgeons at the commencement of the present century.—*Dunglison.*

Barbican [fr. *barbacana*, M. Lat.], a watch-tower or bulwark.

Barbicanage, money given towards the maintenance of a barbican; a tribute for repairing or building a bulwark.

Barcarium, a sheep cote; a sheep walk.

Bargain and sale [the word *bargain* is from *barguigner*, O. Fr., to chaffer, bargain, or more properly to wrangle or haggle, in the making of a bargain], a species of conveyance.

It is of two kinds:—

(1) *Improper.* This is a Common Law conveyance, and is resorted to in order to execute a Common Law power or authority to sell or mortgage realty, given to an executor by a will, or to carry out a power to dispose of property conferred by statute. The operative words are 'bargain and sell.' The estate passes by force of the will or statute, the bargain and sale merely nominating the transferee, and thus ascertaining a purchaser. It does not require enrolment, unless specially directed. See 2 *Hayes's Com.* 80, *n.* (64), and 5 Eliz. c. 26, as to bargains and sales of lands in Lancashire, Chester, and Durham; 25 Geo. III. c. 35, as to extended lands of Crown-debtors; and the repealed 12 & 13 Vict. c. 106, ss. 208, 209, and 210, as to a bankrupt's entails and copyholds.

(2) *Proper.* This is an equitable conveyance by which the bargainee, who is entitled to the use, becomes immediately seised of the possession or legal estate pursuant to the Statute of Uses, without any other ceremony than the delivery of the deed. There must be a pecuniary, although it may be but a nominal, consideration to raise a use upon this assurance. The appropriate operative words are, 'bargain and sell.' A bargain and sale of freeholds must be enrolled within six lunar months from its date, in one of the Courts of Record at Westminster, or with the *custos rotulorum* of the county, under the 26 Hen. VIII. c. 16, which does not, however, extend to any hereditaments lying within any city, borough, or town corporate, wherein the mayors, recorders, or other officers have authority to enrol deeds. An examined copy of the enrolment of the bargain and sale is admissible in evidence, notwithstanding the existence of the original (10 Anne c. 18, s. 3). A bargain and sale of chattel interests does not require enrolment, and when a bargain and sale is adopted as a disentailing assurance (which, by the way, is not advisable, since it does not transmute the seisin), such assurance, although not enrolled within the time prescribed by 27 Hen. VIII. c. 16, will, if enrolled in Chancery within six calendar months of its execution, be good and valid (3 & 4 Wm. IV. c. 74, s. 41). A chief difference between a proper and an improper bargain and sale is, that in the former a use cannot be limited upon the legal estate in the bargainee, so as to be executed and become a legal estate by the statute, for it must be a trust; but in the latter a seisin is raised, on which uses, which the statute will execute, may be limited.—2 *Sand. Uses*, 53; 2 *Br. & Had. Com.* 538.

Bargainee, a person to whom a bargain and sale is made.

Bargainer, or **Bargainor,** a person who makes a bargain and sale.

Barkary, a tan-house, or a place to keep bark in for the use of tanners.

Barleycorn, the third of an inch.

Barmote, or **Barghmote,** a court, not of record, within the Hundred of the Peak in Derbyshire, for the regulation of groves, possessions, and trade of the miners, and lead.

Barnard's Inn, an Inn of Chancery. See INNS OF CHANCERY.

Baron [fr. *beorn*, Sax., noble], the fifth and lowest degree of nobility, next to a viscount,

and above that of a knight or baronet. In the Salic Law it signifies free-born. The present barons are—(1) By prescription; for that they and their ancestors have immemorially sat in the Upper House. (2) Barons by patent, having obtained a patent of this dignity to them and their heirs male, or otherwise. (3) Barons by tenure, holding the title as annexed to land; it is said that it is the possession of their ancient landed territories which imparts the barony to the bishops, thereby giving them a place in the Upper House, although they hold by succession, not by inheritance; but it is rather thought that they sit in the Upper House by immemorial usage.

Baron Court. See COURT BARON.

Baron and feme [Fr.], husband and wife. A wife being under the protection and influence of her *Baron*, lord, or husband, is styled a *feme-covert* (*fœmina viro cooperta*), and her state of marriage is called her *coverture*. See HUSBAND AND WIFE.

Baronet [fr. *Baron*, Fr., and *et*, diminutive termination], the holder of a dignity of inheritance created by letters patent, and descendible to the issue male. He has precedency before all knights, except Knights of the Garter; and would even take precedency of them, were it not that Knights of the Garter are always privy counsellors. The order was instituted in 1611 by James I., who conferred the dignity in consideration of the payment of 1000*l.* to the Crown, the money so raised being applied to pay the troops sent to quell an insurrection in the province of Ulster in Ireland. The number was at first 200, but has since much increased. Baronets may charge their coat with the arms of Ulster, which are a sinister hand, erect, open, and couped at the wrist, *gules* (red) in the field *argent* (white). The title 'Sir' is prefixed to their name. The first baronet created was Sir Nicholas Bacon, of Redgrave, in Suffolk, whose successor is therefore styled *Primus Baronetorum Anglicæ*.

Barons of the Exchequer, the judges of the Court of 'The Exchequer of Pleas' at Westminster. See EXCHEQUER, COURT OF.

Barony, or **Baronage**, the honour and territory of a baron; also the body of barons and peers.

Barony of land, a quantity of land amounting to 15 acres. In Ireland, a subdivision of a county.

Barratry. 1. Usually called 'common barratry,' the common moving of suits and quarrels in disturbance of the peace, either in courts or elsewhere.

The punishment is fine and imprisonment; and if the offender belonged to the profession of the law he was disabled from practising for the future, by 12 Geo. I. c. 29; 21 Geo. II. c. 3, which acts are still unrepealed, though the law has long been obsolete.

2. In marine assurance, the commission of any fraud upon the owners or insurers of a ship by the master or crew, as deserting her, sinking her, or doing any act which may subject her to arrest, detention, loss, or forfeiture, etc. It is the practice in most countries to insure against barratry. Many foreign jurists hold, that it comprehends every fault which the master and crew can commit, whether it arises from fraud, negligence, unskilfulness, or mere imprudence. But in this country it is ruled, that no act of the master or crew shall be deemed barratry, unless it proceed from a criminal or fraudulent motive.—*Arnould on Marine Insurance*, 6th ed., 774 *et seq.*

3. In Scotland, it is the crime of a judge who is induced, by bribery, to pronounce a judgment; and it is also applied to the simony of clergymen, going abroad to purchase benefices from the see of Rome.—*Jamieson.*

Barrel, a measure of 36 gallons.

Barren money, money not put out at interest.

Barr-fee, a fee of 20*l.* payable by every prisoner acquitted of felony to the sheriff or gaoler.—*Termes de la Ley.*

Barrister, or **Barrastor**, a counsellor or advocate learned in the law, admitted to plead to the bar, and there to take upon himself the protection and defence of clients. He is termed *jurisconsultus* and *licentiatus in jure*. As to his fees in the 15th century, see 3 *Hall. M. A.* 371. As to the mode and qualification for obtaining the degree of a barrister, see INNS OF COURT; and consult *Warren's Law Studies*, and *Forsyth's Hortensius.*

A counsel can maintain no action for his fees, which are given not as a salary or hire, but as a mere *honorarium* or gratuity, and even an express promise by a client to pay money to counsel for his advocacy is not binding. See *Kennedy* v. *Broun*, 13 *C. B. N. S.* 677, 9 *Jurist, N. S.* 119, where the whole law on the subject of counsels' fees is elaborately discussed. Moreover, the payment of a fee does not depend upon the event of a cause; and for the purpose of promoting the honour and integrity of the bar, it is expected that all their fees should be paid when their briefs are delivered.—1 *Chitty R.* 551. On the other hand, he is not liable to an action for negligence or unskilfulness, but a Bill to alter the law in this respect was introduced in the House of Commons by Mr. Norwood.

A counsel is not answerable for any matter by him spoken relative to the cause in hand and suggested in his clients' instructions, although it should reflect upon the reputation of another, and even prove groundless. See *Hodgson* v. *Scarlett*, 1 *B. & A.* 232.

It is a rule of etiquette, but *not* a rule of law, that a barrister should not take instructions except through the intervention of a solicitor. See *Doe & Bennett* v. *Hale*, 15 *Q. B.* 171, where it was said that the rule of etiquette was beneficial, and ought to be maintained, and the correspondence between the Attorney-General and Mr. Yerburgh, M.P. (*Solicitors' Journal*, July 7th, 1888), where, however, an important distinction is drawn between contentious and non-contentious business.

Barristers have exclusive audience in the Supreme Court, except in Bankruptcy business, and before the Railway and Canal Commission, where, as in the County Courts, they are heard along with solicitors.

For a list of the posts for which barristers only and barristers and solicitors only are qualified, with the length of standing required, see *Chit. Stat.* vol. vi., *General Index*, tit. '*Barrister*.'

Barrow [fr. *beorg*, Sax., a heap of earth], a large hillock or mound used as a sepulchre, found in many parts of England.

Barter [fr. *baratar*, Sp., to overreach or circumvent], to exchange one commodity for another, or truck wares for wares.

Barton, Berton, or **Burton** [fr. *beretun*, *berteun*, *bere wic*, A.S., a court-yard, corn-farm; from *bere*, barley, and *tun*, inclosure, or *wic*, dwelling. A.S.—*Bosw.*], demesne lands of a manor, a great farm, a manor-house, out-houses, fold-yards, a court-yard.

In the 2 & 3 Edw. VI. c. 82, barton lands and demesne lands are used as synonyms. Blount says it always signified a farm distinct from a mansion; and *bertonarii* were farmers or husbandmen who held bartons at the will of the lord. In the west of England they call a great farm a *barton*, and a small farm a *living*.—*Encyc. Lond.*

Bas-Chevaliers, low or inferior knights, holding inferior fees by a base tenure, as distinguished from bannerets, chief or superior knights. Simple knights are called knights bachelors, *base-chevaliers*.

Bascinet, or **Bassinet**, a light helmet worn by the infantry in the reigns of Edward II. and III. and Richard II.

Base-Court, an inferior court, not of record, as a court-baron, court-leet, etc.

Base-estate, lands held by base-tenants, who performed villeinous services to their lords; but there is a difference between a base estate and villenage, for to hold in pure villenage is to do all that the lord commands; and if a copyholder have but a base estate, he not holding by the performance of every commandment of his lord, cannot be said to hold in villenage.—*Kitch.* 41.

Base-fee, this species of inheritable freehold is marked, as to its duration or time of continuance, by an event beyond which it is not to endure. The event is the qualification which gives a name to this estate, and ascertains its determination. A fee qualified is frequently called a fee-base, i.e., impure, defective, and circumscribed. There is hardly any event, provided it be lawful, and do not violate the rule against perpetuity, which may not be made the cause of the determination of this fee.

The following events are specimens of qualifications, which may be expressly annexed to this estate.

A limitation to A. and his heirs;

(1) Peers of the realm;

(2) Lords of the manor of Blackacre;

(3) Tenants of the manor of Dale;

(4) During the time whilst a particular tree shall stand;

(5) Till the marriage of a certain person takes place;

(6) Till certain debts be paid;

(7) Till default be made in payment of a given debt, at a certain time;

(8) Until a minor shall attain his majority.

When these events terminate, or the acts are done or omitted to be done, according to the meaning of the given restrictions, the fee-qualified will cease; but it may possibly, as is obvious, continue for ever, in those instances especially where the qualification is not certain to take place. The estates will then continue precisely in the same manner, as if no collateral event, giving to the estate a determinate character, had been annexed to it. A base-fee may arise in the absence of any express qualification when it is made determinable by construction of law, on a certain event. As where a tenant-in-tail, with remainder to a stranger, conveys the fee-simple to another in the property entailed upon him, such other takes a qualified fee by legal construction, determinable on the death of the tenant-in-tail, and failure of the issue under the entail. Another example of such an estate, is when a tenant-in-tail, not being himself entitled to the immediate remainder or reversion in fee, conveys without the consent of the protector of the settlement, he then transfers a base-fee, determinable on the failure of his issue in tail (3 & 4 Wm. IV. c. 74, s. 34). A qualified fee is

confined in its extent, and confers a limited power of alienation, entitling the owner to give an interest of the same extent and continuance only to another person which he has in himself. So that the estate will, notwithstanding the transfer, be determinable, and, into whose hands soever it may come, will cease on the happening of the event upon which such qualified fee depends.

Base-infeftment, a disposition of lands by a vassal, to be held of himself.—*Scotch Law.*

Baselard, or **Basillard**, a weapon, a poignard.—*Speight's Chaucer ;* 12 *Rich. II.* c. 6.

Basels, coins abolished by Hen. II., A.D. 1158.

Base-rights, those by which a grantor creates a subinfeudation in favour of a vassal, to be held of himself.—*Scotch Law.*

Basileus [Gk.], a king.—*Monasticon.*

Basilica, a new body of law, framed A.D. 880 by the Emperor Basilius, and published by his successor Leo, surnamed the Philosopher under the title of Βασιλικά, either in honour of his father, or as containing the imperial law.—1 *Colquhoun's Roman Civil Law*, s. 77.

Basket-tenure, lands held by the service of making the king's baskets.

Bassa tenura, a base tenure, was a holding by villenage, or other customary service, opposed to *alta tenura*, the highest tenure *in capite*, or military by service.

Basset, an unlawful game.

Bassinet, a skin used by soldiers for coverings. See BASCINET.

Bassnetum, a helmet.

Bastard [fr. Βασσαρίς, Gk., a concubine ; fr. *bas*, low, and *start* (*steort*, A.S.), risen, upstart ; or fr. *baos*, Gael., fornication]. A bastard, according to Blackstone (I. 454), is one that is not only begotten but born out of lawful marriage. The civil and canon laws did not allow a child to remain a bastard if the parents afterwards intermarried, but when it was proposed by the bishops to assimilate the law of England to the canon laws in this respect all the earls and barons with one voice answered that they would not change the laws of the realm (*nolumus leges Angliæ mutare*). *Statute of Merton*, 28 *Hen. III.* c. 9.

A person born in wedlock, may be declared a bastard by legal sentence.

A bastard has neither duties towards his natural parents nor claims upon them, save as regulated by the 7 & 8 Vict. c. 101, 35 & 36 Vict. c. 65, and 36 & 37 Vict. c. 9 —by which the mother, either before the birth, or twelve months after it, or any time after it upon proof that the father has paid money for its maintenance, may obtain from justices an 'affiliation order,' i.e., an order upon the person proved to be the father to pay not more than 5*s.* a week,—nor any claim to succession to their goods, nor any right to any name save such as he acquires. But a bastard may not marry any person whom he could not have married if his parents had been married before his birth, and is punishable for incest if he carnally knows any such. In the case of persons born in wedlock, *pater est quem nuptiæ demonstrant*, and all the legal rights and privileges of a child attach, however conspicuous and notorious may be the origin of the person, until his status has been legally destroyed. (See ACCESS, NON-ACCESS.) See *Saunders on Bastardy.*

Bastard eigné, an elder son born before marriage ; thus if a man have a natural son, and afterwards marry the mother, and by her have a legitimate son, the latter is called *mulier puisné*, and the elder son *bastard eigné.*—*Watk. Descent*, c. v. ; 2 *Br. & Had. Com.* 399.

Bastardize, to declare one a bastard, as a Court does. 2. To give evidence to prove one a bastard. A mother (married) cannot bastardize her child. See ACCESS.

Bastardy, the state of a person not born in lawful wedlock.

Bastardy-bonds, to indemnify parishes as to natural children likely to be born, are made void by 4 & 5 Wm. IV. c. 76, s. 70.

Bastart, one born in concubinage, a bastard.

Bas-ville, suburbs of a town.—*Fr.*

Batable-ground, land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union.—*Skene.*

Bath, Knights of the, a military order of knighthood, instituted by Richard II. The order was newly regulated by notifications in the *London Gazette* of 25th May, 1847, and 16th Aug., 1850.

Baths and Washhouses. The Acts 9 & 10 Vict. c. 74 (slightly extended by 45 & 46 Vict. c. 30), and 10 & 11 Vict. c. 61, for encouraging the establishment of public baths and washhouses, may be adopted in any incorporated borough, town, etc. See also SWIMMING BATHS.

Batta, discount. 'In revenue matters,' says Mr. Wilson in the *Indian Glossary*, 'the amount added to, or deducted from, any judgment according to the currency in which it is paid as compared with a fixed standard coin.'—*Indian.*

Battel, Wager of, a form of trial formerly used in military cases, arising in the court of chivalry and honour, in appeals of felony, in

criminal cases, and in the obsolete real action called a writ of action. The question at issue was decided by the result of a personal combat between the parties, or, in the case of a writ of right, between their champions. See *Ashford* v. *Thornton*, 1 *B. & Ald.* 405, which led to the practice, which had long been disused, being formally abolished by 59 Geo. III. c. 46.

Battersea Park. See 14 & 15 Vict. c. 77.

Battersega, the ancient name of Battersea, in Surrey.

Battery [*batterie*, Fr., fr. *batte*, to beat], beating and wounding. This, in law, includes every touching or laying hold, however trifling, of another's person or clothes, in an angry, revengeful, rude, insolent, or hostile manner. It is a good defence to prove that the alleged battery happened by misadventure, or that it was merely an amicable contest, or that it was the correcting of a child by its parent, or the punishment of a criminal by the proper officer, or that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence. As to the criminal proceedings for battery, see 24 & 25 Vict. c. 100, ss. 42, 43. See ASSAULT.

Battlings [fr. *battellus*, Lat., a small measure, fr. *batus*, measure of allowance], an allowance of money, as '*battles*,' or '*battels*,' is an allowance of provisions, and '*to battle*,' to take that allowance.—*Encyc. Lond.*

Bawdy-house [fr. *bawd*, dirt]. See BROTHEL.

Bay, or **pen**, a pond-head made of a great height to keep in water for the supply of a mill, etc., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate.—27 *Eliz.* c. 19. Also an arm of the sea surrounded by land except at the entrance.

Bazar, daily market or market-place.

Beacon [fr. *beacen*, A.S., a sign, whence *beckon*, to nod], a light-house, or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now used for the guidance of ships at sea, by night as well as by day. The Trinity House is empowered to set up any beacons or seamarks wherever they shall be deemed necessary.—8 *Eliz.* c. 13. See 17 & 18 Vict. c. 104, ss. 2 and 389—416.

Beaconage, money paid towards the maintenance of beacons.

Beadle [fr. *beodan*, A.S., to bid], a church-servant who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables.

Beam [fr. *beam*, Sax., tree], the part of a stag's head, whence the horns spring, like branches out of a tree. A common balance of weight in cities and towns.

Beams, and **Balance**, instruments for weighing goods and merchandise, mostly used in the city of London.

Bear, one who speculates for a fall in the market.—*Stock Exchange.*

Bearer, a person who carries anything.

Bearers, persons who oppress others, usually called maintainers; justices have power to inquire into their actions, etc.—4 *Edw. III.* c. 11.

Bearrocsira, the ancient name of Berkshire.

Beasts *of chase* [*feræ campestres*, Lat.]; there are five, viz., the buck, doe, fox, marten, and roe.—*Co. Litt.* 233; *of the forest* are the hart, hind, hare, boar, and wolf. They are also called beasts of venary.—*Ibid.*; *of the warren* are the hare and coney.—*Co. Litt.* 283.

Beau-pleader (to plead fairly), an obsolete writ upon the Statute of Marlbridge (52 Hen. III. c. 11), which enacts that neither in the circuits of the justices, nor in counties, hundreds, or courts-baron, any fines shall be taken for fair-pleading, i.e., for not pleading fairly or aptly to the purpose: upon this statute, then, this writ was ordained, addressed to the sheriff, bailiff, or him who shall demand such fine, prohibiting him to demand it; an *alias*, *pluries*, and attachment followed.—*Nat. Br.* 596. It used to be had as well in respect of *vicious* as *fair* pleading by way of amendment.—2 *Inst.* 122.

Bebba, the ancient name of Bamburgh, in Northamptonshire.

Beck [fr. *becc*, Sax.], a small brook.

Bed of justice [*lit de justice*, Fr.], the seat or throne upon which the King of France sat when personally present in parliament; hence it signified the parliament itself.

Bedel, or **Beadle** [fr. *bydel*, Sax.], a cryer or messenger of a court, who cites men to appear and answer; an inferior officer of a parish or liberty. Many other kinds of subordinate officers are so called. See BEADLE.

Bedelary, the jurisdiction of a bedel.

Bederepe, or **Biderepe**, a service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest.

Bede-role, or **Bead-roll**, a long list.

Bedeweri, banditti, profligate and excommunicated persons.—*Mat. Paris.*

Bedford Level, a tract of fenny land in the counties of Norfolk, Suffolk, Cambridge, Huntingdon, Northampton, and Lincoln, drained by the Earl of Bedford, in 1649. By the Bedford Level Act, 15 Car. II. c. 17, all conveyances and charges, except leases for seven years, are required to be registered.

The practice is to register the instrument at length. The registry does not include wills; but conveyances omitted to be registered are valid for all purposes, except for entitling the grantees to the privileges conferred by the act on the owners of lands within the level. See 11 Geo. III. c. 78; 36 Geo. III. c. 73; 1 & 2 Geo. IV. c. 64; and 24 & 25 Vict. c. 97, ss. 30, 31.

Beer, a liquor, compounded of malt and hops. The selling of it by retail is regulated by various acts. The Licensing Act of 1828, which did not allow the sale of beer by retail except in 'alehouses,' etc., requiring a license from justices of the peace—which license the justices might grant or refuse at their discretion—not being considered to afford sufficient facilities for supplying the public with beer, the Beer Act of 1830, 11 Geo. IV. & 1 Wm. IV. c. 64, was passed to allow any person to retail beer upon taking out an excise license only.

This act was amended in 1834 by 4 & 5 Wm. IV. c. 85, which drew a distinction between houses for the retail of beer *to be drunk on the premises* where sold—commonly called *beerhouses*—and houses for the retail of beer *not to be drunk on the premises* where sold—commonly called *beershops*, by requiring that the keeper of a beerhouse should obtain as a condition precedent to his excise license a certificate of good character, signed by six ratepayers not engaged in the trade.

The Wine and Beerhouse Act, 1869, 32 & 33 Vict. c. 29, by requiring a justices' license,—with a saving for vested interests,—placed beerhouses, beershops, and alehouses much on the same footing, and the Licensing Acts of 1873 and 1874 have continued this mode of treatment. The 'Beer Dealers' Retail Licenses (Amendment) Act, 1882,' 45 & 46 Vict. c. 34, confers on the justices of the peace an absolute discretion to refuse licenses for the sale of beer to be drunk off the premises where sold, repealing *pro tanto* the Act of 1869, which limited the power to refuse such licenses to cases where the applicant or his house had been proved to bear a bad character or the house to be below a certain rateable value. See also INTOXICATING LIQUORS.

Beerhouse. A house where beer is sold to be drunk either on or off the premises.

Beershop. A house where beer is sold to be drunk off the premises only.

Bega, a land measure used in the East Indies. In Bengal it is equal to about a third part of an acre.

Beggars. See VAGRANTS.

Begging the question. See PETITIO PRINCIPII.

Begin, Right to. This right rests with the party on whom is the onus of proving the affirmative. See 1 *Ch. Arch. Pr.*

Begum, a lady, princess, woman of high rank.—*Indian.*

Behoof [fr. *behofian*, A.S., to be fit], use, service, profit, advantage, or behalf.

Belgæ, the ancient name of the inhabitants of Somersetshire, Wiltshire, and Hampshire: also of the city of Wells, in Somersetshire.

Belisama, the ancient name of Rhibelmouth, in Somersetshire.

Belles lettres, polite literature.

Bellinus sinus, the ancient name of Billingsgate, in the city of London.

Bello campo, de, the ancient name of Beauchamp.

Bellociivum, Bello desertum, Bellus locus, the ancient name of Beaudesert, in Staffordshire.

Bello loco, de, the ancient name of Beaulieu, in Hampshire.

Bellomariscus, the ancient name of Beaumaris, the county town of Anglesey.

Bello Prato, de, ancient name of Beaupré.

Bench [fr. *banco*, A.S.], or **Banc** [Fr.], a tribunal of justice. The aggregate body of judges; (2) of the judges of any given court; (3) the aggregate body of bishops. In the time of the Commonwealth, the King's Bench was called the Upper Bench. See QUEEN'S BENCH, COMMON BENCH.

Benchers, seniors in the Inns of Court, usually but not necessarily Queen's Counsel, elected by co-optation, and having the entire management of the property of their respective inns. The benchers have also the power of punishing a barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the hall or using the library, or even by expelling him from the bar, called disbarring. They may also refuse admission to a student, or reject his call to the bar, as was done in two cases in 1888. There is an appeal from them to the judges. See *R.* v. *Gray's Inn*, 1 *Dougl.* 353.

Bench warrant, an attachment issued by order of a criminal Court against an individual either for contempt, or for the purpose of arresting a person accused, when a true bill has been found against him by a grand jury; a warrant signed by a judge, or two justices of the peace, to apprehend a prisoner charged with an offence.

Benefice [fr. *beneficium*, M. Lat., a kindness], an ecclesiastical living and promotion, a rectory or vicarage: all church preferments except bishoprics; also a fief in the feudal system. See ADVOWSON.

Beneficiary, he that is in possession of a

benefice; also a *cestui que trust*, or person having the enjoyment of property, of which a trustee, executor, etc., has the legal possession. See CESTUI QUE TRUST.

Beneficiary privileges, patent rights and copyrights.

Beneficio primo ecclesiastico habendo, an ancient writ, which was addressed by the King to the Lord Chancellor, to bestow the benefice that should *first* fall in the royal gift, above or under a specified value, upon a person named therein.—*Reg. Orig.* 307.

Beneficium abstinendi, the power of an heir to abstain from accepting the inheritance.—*Sand. Just.*, 7th ed., 217; *Cum. C.L.* 156.

Beneficium cedendarum actionum, the privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them. —*Sand. Just.*, 7th ed., 338, 357.

Beneficium competentiæ, a right of certain persons which saves them from being condemned beyond such an amount as they can pay without depriving themselves of the necessaries of life.—*Cum. C. L.* 350.

Beneficium inventorii, the privilege which an heir had by an inventory of the testator's property to protect himself from the debts.—*Cum. C.L.* 159.

Beneficium ordinis, or **excussionis** or **discussionis**, a privilege by which a creditor was bound to sue the principal debtor first, and could only sue the sureties for that which he could not recover from the principal.—*Sand. Just.*, 7th ed., 357.

Beneficium separationis, the right to have the goods of an heir separated from those of the testator in favour of creditors.—*Civil Law.*

Benefit Building Societies, certain associations which have been established in different parts of the kingdom, principally amongst the industrial classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property. The legislature afforded encouragement and protection to such societies by 6 & 7 Wm. IV. c. 32. Consult *Davis on Building Societies.* By the 37 & 38 Vict. c. 42, and the 38 & 39 Vict. c. 9, the 6 & 7 Wm. IV. c. 32 has been repealed, and the law relating to such societies has been consolidated and amended.

Benefit of Clergy [*privilegium clericale*, Lat.], an arrest of judgment in criminal cases. The origin of it was this: Princes and states, anciently converted to Christianity, granted to the clergy very bountiful privileges and exemptions, and particularly an immunity of their persons in criminal proceedings before secular judges. The clergy, afterwards increasing in wealth, number, and power, claimed this benefit as an indefeasible right, which had been merely a matter of royal favour, founding their principal argument upon this text of Scripture: 'Touch not mine anointed, and do my prophets no harm.' They obtained great enlargements of this privilege, extending it not only to persons in holy orders, but also to all who had any kind of subordinate ministration in the church, and even to laymen if they could read, applying it to civil as well as criminal causes. These exemptions at length grew so burthensome and scandalous, that the legislature, from time to time, interfered by making particular offences 'felony, without benefit of clergy,' and finally the general enactment 7 & 8 Geo. IV. c. 28, s. 6, abolished benefit of clergy altogether.—2 *Hale's Hist.* 323.

Benefit of discussion, is that, whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, etc., must be first pursued to fulfil the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners.—*Scotch Law.*

Benefit Societies. See FRIENDLY SOCIETIES.

Benerth, an ancient service which a tenant rendered to his lord with plough and cart.

Benevolence, nominally a voluntary gratuity given by subjects to their king, but in reality a tax or forced loan. It is now yielded only with consent of the House of Commons, in pursuance of the Petition of Right, 3 Car. I., and 1 W. & M. st. 2, s. 2. Also an aid granted by a tenant to his lord, in times of distress, abolished by 13 Car. II. c. 24.

Benevolentia regis habenda, the form of purchasing the royal pardon and favour, in ancient fines and submissions, to be restored to estate, title, or place.—*Paroch. Antiq.* 172.

Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat, quam pereat; et verba intentioni, non è contra debent inservire. Co. Litt. 36.—(Constructions are to be made liberally, on account of the simplicity of the laity, that the thing may rather avail than perish; and words ought to serve the intention, not contrariwise.) This maxim relates to the mode of interpreting written instruments. The judges will rather apply the words of a document to fulfil its lawful intent, than destroy such intent because of insufficient language, for to the intention, when once discovered, all technical forms of expression must give way.

Benignior sententia inverbis generalibus seu dubiis, est præferenda. 4 Co. 15.—(The more favourable construction is to be placed on general or doubtful expressions.)

Bequeath [fr. *becwæthan*, fr. *cwæthan*, A.S., to say], to leave by will to another. The word is properly applied to personalty only, but in a will avails to transmit real property, as well as the word devise, which is the proper word; *vice versâ*.

Bequest, a gift of personal property by will; a legacy.

Berbiage, a rent paid for the depasturing of sheep.—*Cowel.*

Berbecaria, a sheep-down, or ground to feed sheep.

Bercaria, a sheep-fold, or other enclosure to keep sheep.

Bercia, **Bercheria**, the ancient names of Berkshire.

Berechingum, the ancient name of Barking, in Essex.

Berefellarii, the seven churchmen, who formerly belonged to the church of St. John of Beverley.—*Blount.*

Berewicha, or **Berewica**, a village or hamlet belonging to some town or manor.—*Domesday Book.*

Berghmaster [fr. *berg*, Sax., a hill], a bailiff or chief officer among the Derbyshire miners, who also executes the office of coroner; a mountaineer or miner.

Berghmoth, or **Berghmote** [fr. *berg*, Sax., a hill, and *gemote*, an assembly], an assembly or court upon a hill, held in Derbyshire, for deciding pleas and controversies among the miners.—*Squire on the Anglo-Saxon government.*

Beria, **Berie**, or **Berry**, a large open field. Those cities and towns in England which end with this word are built on plain and open places, and do not derive their names from boroughs, as *Spelman* imagines; the true sense of the word *berie* is a flat wide champaign, as is proved from sufficient authorities by the learned *Du Fresne*, who observes that *Beria Sancti Edmundi*, mentioned by *Mat. Paris*, sub. ann. 1174, is not to be taken for the town, but for the adjoining plain.—*Encyc. Lond.*

Bermundi Insula, the ancient name of Bermondsey in Surrey.

Bernet [fr. *byran*, Sax.], to burn.

Berra, a plain open heath.

Berry, or **Bury** [fr. *beorg*, Sax., a hill or castle], a villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

Bersa, a limit or bound.

Bersare [fr. *bersn*, Ger.], to shoot or hunt.

Berwick-upon-Tweed, a town which was originally part of Scotland, but is now part of the realm of England, and bound by all acts of the British Parliament, whether specially named or otherwise (20 Geo. II. c. 42, s. 3). It is a county of a town corporate, and is no part of the county of Northumberland. See *Hale's Hist.* 257.

Besaile, or **Bessayle** [fr. *besaïeul*, Fr.], a father of a grandfather.

Bescha [fr. *bescher*, Fr., to dig], a spade or shovel.

Besoin, need. See Au Besoin.

Bestiality, the crime of men with beasts, punishable under 24 & 25 Vict. c. 100, s. 61, by penal servitude for life.

Bestials, beasts or cattle of any sort.

Betaches, laymen using glebe lands.

Bethlehem, a royal lunatic hospital. See 16 & 17 Vict. c. 96, s. 35, and 23 & 24 Vict. c. 60, s. 2. See Lunatic Asylum.

Better equity. It thus arises:—if a *prior* incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice by the party who had the legal estate, a *second* incumbrancer taking a security, which in its nature afforded him that protection, had 'the better equity.'—*Deark* v. *Hall*, 3 *Russ.* 1—65.

Betting-Houses, the act for the suppression of, 16 & 17 Vict. c. 119. Betting in the streets is prohibited by 30 & 31 Vict. c. 134, s. 23; and by 31 & 32 Vict. c. 52, s. 3, persons unlawfully playing or betting in streets or public places are to be deemed rogues and vagabonds within the meaning of the 5 Geo. IV. c. 83. By 37 Vict. c. 15, s. 3, penalties are imposed on persons advertising or sending letters, circulars, telegrams, etc., as to betting. See Gaming.

Beverches, bed works, or customary services done at the bidding of the lord by his inferior tenants.

Beward, expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares.

Bice Viasya, a man of the third Hindu caste, who by birth is a trader or husbandman.

Bicycles. The use of these and similar machines, formerly regulated by byelaws made by local authorities under the Highways Act of 1878, and the Municipal Coporations Act, 1882, is regulated by s. 85 of the Local Government Act, 1888, which repeals all acts empowering byelaws to be made on the subject, declares bicycles, etc., to be 'carriages within the meaning of the Highway Acts' (see especially s. 78 of the Highway Act, 1835), and in addition provides that cyclists must carry lamps between one hour after sunset and one hour before sunrise,

and must give warning of their approach by bell or whistle.

Bid [fr. *beidan*, Goth.; *bidan*, *abidan*, A.S., to look for; *sed qu.*], an offer to give a price for an article about to be sold at an auction. See BIDDER; BIDDINGS.

Bidal, or **Bidall** [fr. *biddan*, Sax., to pray], an invitation of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like '*house-warming*,' i.e., a visit of friends to a person beginning to set up housekeeping.—26 Hen. VIII. c. 6.

Bidder, a person who makes an offer at an auction, which he may retract before acceptance, although there may be a condition prohibiting it.

Bidding of the beade, a charge or warning given by the parish priest to his parishioners at some special time, to come to prayers upon any festival or saint's day, according to the canons of the church; also asking the banns is called bidding.—*Rubric.*

Biddings, raising the price of a thing at a sale or auction. The French call this *enchérir*. It answers to what the Romans called *licitari*; they used to bid by holding up the hand or finger. See BID; BIDDER.

Bidentes, two-yearling stags, or sheep of the second year.—*Paroch. Antiq.* 216.

Biduana, a fasting for the space of two days.—*Matt. West.* 135.

Biens [Fr.], property; this term comprehends not merely goods and chattels, as in the common law, but also real estate, according to the sense attached to it by the civilians and continental jurists.—*Story's Conf. Laws.*

Biga, a cart, wain, or waggon; a chariot drawn by two horses, harnessed side by side; or, properly, a cart with two wheels, sometimes drawn by one horse.

Bigamus, a person guilty of the offence of bigamy.

Bigamus seu trigamus, etc., est qui diversis temporibus et successivè duas seu tres uxores habuit. 4 Inst. 88.—(A bigamus or trigamus, etc., is one who at different times and successively has married two or three wives.)

Bigamy, the felonious offence of a husband or wife marrying again during the life of the first wife or husband, a felony, punishable by penal servitude for not more than seven years, or less than five, or by imprisonment for not more than two years, with or without hard labour, by 24 & 25 Vict. c. 100, s. 57, which section, however, does not apply to any person whose husband or wife shall have been continually absent for seven years from such person, and shall not have been known to such person to be living within that time, or to cases of a first marriage dissolved by divorce or judicially declared void. If the first marriage be void, an indictment for bigamy cannot be sustained. Thus, if a woman marry A, and in the lifetime of A, marry B, and after the death of A, and whilst B is alive, marry C, she cannot be indicted for bigamy in her marriage with C, because her marriage with B was a mere nullity. Proof, however, of a marriage which is voidable merely will support an indictment for bigamy. The first wife or husband is not a competent witness to prove any part of the case, but the second wife or husband is, after the first marriage is established, for she or he is not legally a wife or husband. See *Russ. on Crimes.*

Bilagines, bye-laws of corporations, etc.

Bilanciis deferendis, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation.—*Reg. Orig.* 270.

Bilateral contract, a contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it.—*Civil Law.*

Bilboes [fr. *boja*, Lat.; *boia*, Prov.; *boie*, O. Fr., fetters], a punishment at sea answering to the stocks on land.

Bilinguis, one who uses two tongues or languages; a jury, part Englishmen and part foreigners, which used to try a foreigner for a crime.

Bill [fr. *bulla*, M. Lat., a seal], an account. 2. A document submitted to parliament, in which are contained certain propositions for its consideration. If approved of, it is passed, and becomes law in the shape of a statute. They are either (1) *public*, affecting the general interests of the state; or (2) *private*, enabling private individuals, associated together, to undertake works of public utility at their own risk, and, in a degree, for their own benefit; and also relating to naturalization, change of name, or perfecting titles to estates, etc. Consult *May's Parliamentary Practice*, and see *Chitty's Statutes*, vol. i., tit. '*Bill in Parliament.*'

Bill of Adventure. See ADVENTURE, BILL OF.

Bill of Appeal, an abolished criminal prosecution.—59 *Geo. III.* c. 46. See BATTEL.

Bill of Attainder, a bill declaring persons attainted and their property confiscated.

Bill Chamber, a department of the Court of Session in Scotland.—*Bell's Dict.*

Bill in Chancery, or **Bill in Equity**, a printed or written statement of a plaintiff's case, in the nature of a petition to the Court, praying for some redress.

For the descriptions of the several bills, see their distinctive names, as PEACE, BILL OF.

Bills are now in name at least abolished, and all actions in the Supreme Court of Judicature are now commenced by writ of summons, followed in certain cases by a statement of claim (R. S. C. 1883). See STATEMENT OF CLAIM; WRIT OF SUMMONS; and PLEADING.

Bill of costs, an account of the charges and disbursement of an attorney or solicitor, incurred in the conduct of his client's business. It must be delivered, signed, to the client, one *calendar* month before an action can be brought to recover the amount thereof in order to give the client an opportunity of taxing it. Conveyancing costs are taxable. An executor or administrator of an attorney or solicitor must also deliver a bill of costs, signed, before he can sue upon it. See 6 & 7 Vict. c. 73, ss. 37—39.

Bill of Credit, a license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.

Bill in Criminal cases, an indictment for a crime or misdemeanour preferred to a grand jury; evidence in support of it is adduced; if the grand jury think it a groundless accusation, they endorse, 'not a true bill,' or 'not found,' and then the party is discharged without further answer, but a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then endorse upon it 'a true bill'; the indictment is then said to be found and the party stands his trial.

Bill of debt, or **Bill obligatory**, when a merchant by his writing acknowledges himself in debt to another, in a certain sum, to be paid on a certain day, and subscribes it at a day and place certain. It may be under seal or not.—*Com. Dig. Merchant, F.* 2.

Bill of entry, an account of the goods entered at the custom house, both inwards and outwards. It must state the name of the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence. Also the name of a daily statistical publication issued by the Customs giving the particulars of goods imported and exported.

Bill of exceptions. If a judge, at the trial of a cause at *Nisi Prius*, mistook the law, either in directing a judgment of nonsuit or in refusing or admitting evidence or challenges, and other matters, the counsel for the party dissatisfied with the ruling of the judge, might tender a bill of exceptions at any time *before* verdict, and require the judge to seal it. The case always went to the jury, and as soon as the bill of exceptions was completed, and judgment had been given upon the verdict, the mode of proceeding was by bringing error on the judgment, and having the matter determined in a Court of Error, and not in the Court out of which the record issued for the trial. The practice, however, of granting new trials had limited the number of cases in which counsel deemed it expedient to tender a bill of exceptions.—1 *Chit. Arch. Prac.*

By the Judicature Act, 1875, Ord. LVIII., r. 1, bills of exception are abolished. But it is provided by s. 22, 'that nothing in the said Act, nor in any rule, etc., shall prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury, etc.: Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal, *founded upon an exception entered upon or annexed to the record.*' It is believed that this section has never been acted upon.

Bill of Exchange. Defined in the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 3, as 'an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.' It is a chose in action, but, for the encouragement of commerce, it is assignable, at common law, by mere endorsement, so that very many names are frequently attached to one bill as endorsers, and each of them is liable to be sued upon the bill, if it be not paid in due time. The person who makes or draws the bill is called the *drawer*, he to whom it is addressed is, before acceptance, the *drawee*, and after accepting it, the *acceptor*; the person in whose favour it is drawn is the *payee*; if he endorse the bill to another, he is called the *endorser*, and the person to whom it is thus assigned or negotiated, is the *endorsee* or *holder*, and so on *ad infinitum*. The earliest recorded bills of exchange, according to Beckmann (*Hist. Invent.* iii. 430), are mentioned by the jurist Baldus, and bear date A.D. 1328. But they were by no means in common use till the next century.—1 *Hall. Lit. Hist.*, pt. 1, c. i., p. 53, n. (*r*).

The whole law of bills of exchange, except so far as relates to stamps and other small matters, is 'codified' by the Bills of Exchange Act, 1882, above mentioned, which,

except s. 53, which provides that a bill is not an assignment of funds in the hands of the drawee, assimilates the law of England and Scotland, but makes comparatively but little alteration in the law of either country.

The remedy to recover on bills of exchange and promissory notes was much simplified and shortened by the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), the procedure under which was continued by Jud. Act, 1875, Ord. II., r. 6, but abandoned afterwards by one of the rules of April 1880.

Bill of gross adventure, an instrument in writing which contains a contract of bottomry, respondentia, and every species of maritime loan.—*Fr. Law.*

Bill of health, a certificate or instrument, signed by consuls or other proper authorities, delivered to the masters of ships at the time of their clearing out from ports or places suspected of being particularly subject to infectious disorders, certifying the state of health at the time that such ship sailed. A *clean* bill imports that at the time the ship sailed no infectious disorder was known to exist. 'A *suspected* bill, commonly called a *touched* patent or bill, imports that there were rumours of an infectious disorder, but it had not actually appeared. A *foul* bill, or the absence of a clean bill, imports that the place was infected when the vessel sailed.'—*McCull. Com. Dict.*

Bill of indemnity, an act of parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the Promissory Oaths Act, 1868, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices. See 29 & 30 Vict. c. 22; 30 & 31 Vict. c. 88; 31 & 32 Vict. c. 72, s. 16. See OATHS.

Bill of lading, a memorandum signed by masters of ships, in their capacity of carriers, acknowledging the receipt of merchants' goods; of which there are usually three parts—one kept by the consignor, one sent to the consignee, and one preserved by the master. It is the evidence of the title to the goods shipped; and by its endorsement and delivery, the transfer of the property in the goods specified therein is generally effected. By 18 & 19 Vict. c. 111, the rights of suit under a bill of lading vest in the consignee or indorsee (as if the contract contained in the bill of lading had been made with himself) without prejudice to any right of stoppage *in transitu* or of freight.

Bill of Middlesex, a fictitious mode of giving the Court of Queen's Bench jurisdiction in personal actions, by arresting a defendant for a supposed trespass. The 2 Wm. IV. c. 39, abolished this fiction; and after 1 & 2 Vict. c. 110, all personal actions in the Superior Courts of Law at Westminster were commenced by writ of summons.

Bill of pains and penalties, a special act of the legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.—4 *Br. & Had. Com.* 334.

Bill of parcels, an account given by the seller to the buyer, containing particulars of the goods bought, and of their price.

Bill of particulars, a statement of a plaintiff's cause of action, or of a defendant's set-off.

Bill of Rights, a declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13th, February, 1689, and afterwards enacted in parliament, when they became King and Queen. It sets forth that King James, by the assistance of evil counsellors, endeavoured to subvert the laws and liberties of this kingdom, by exercising a power of dispensing with and suspending of laws; by levying money for the use of the Crown by pretence of prerogative, without consent of parliament; by prosecuting those who petitioned the king, and discouraging petitions; by raising and keeping a standing army in time of peace; by violating the freedom of election of members to serve in parliament; by violent prosecutions and the causing partial and corrupt jurors to be returned on trials, excessive bail to be taken, excessive fines to be imposed, and cruel punishments to be inflicted; all of which were declared to be illegal. The declaration concludes in these remarkable words: 'And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.' And the act of parliament itself (1 W. & M. st. 2, c. 2) recognises all and singular the rights and liberties asserted and claimed in this said declaration, to be the true, ancient, indubitable rights of the people of this kingdom.

Bill of sale, an assignment by deed of chattels-personal. See *Twyne's case,* 3 *Co.* 80 [44 Eliz.], and 1 *Smi. L. C.* 1 *et seq.*, where the principal cases are collected.

The registration of bills of sale was first provided for in 1854 by 17 & 18 Vict. c. 31, which enacted that every bill of sale or a copy thereof should be void as against assignees in bankruptcy and execution creditors, un-

less the bill of sale or a copy thereof should have been filed in the Court of Queen's Bench within twenty-one days after its execution together with an affidavit of the time of the bill of sale being given, and a description of the residence and occupation of the deponent and of every attesting witness of the bill of sale. In 1866, by 29 & 30 Vict. c. 96, registration had to be renewed every five years. The two acts were consolidated with some important amendments by the Bills of Sale Act, 1878, 41 & 42 Vict. c. 31. The principal amendments were these:—The period within which to register was altered from twenty-one to seven days. The attestation of solicitor, who is to state in the attestation that the effect of the bill of sale has been explained to the grantor, was required. The act is applied to trade machinery. The evasion of the law (held to be a successful evasion in *Ramsden* v. *Lupton*, *L. R.* 9 *Q. B.* 17) by giving successive bills of sale, of which the last only was registered, is prevented. Fixtures and growing crops are not to be deemed separately assigned when the land passes by the same instrument.

Further important amendments are effected by the Bills of Sale Act, 1882, 45 & 46 Vict. c. 43, the principal amendments being that a bill of sale must have attached thereto a schedule of the property comprised therein (s. 4); that an unregistered bill of sale is void as between grantor and grantee, and not only as between grantee and trustees in bankruptcy and execution creditors, as was formerly the case (s. 8); that the causes for which seizure may be made are limited to default in payment of the sum secured, bankruptcy, fraudulent removal of the goods, non-production of receipt for rent, and suffering execution (s. 7); that the bill is void unless it be in a form scheduled to the act (s. 9); that attestation by a solicitor is dispensed with, and attestation by a 'credible witness' substituted (s. 10); that a bill is void if made for less than 30*l.* (s. 12); and, by the repeal of s. 20 of the Act of 1878, that goods comprised in the bill are to be in the order and disposition of the bankrupt within the meaning of the bankruptcy law, and therefore vest, on bankruptcy of the grantor, in his trustees for the benefit of his creditors (s. 15). Further small amendments have been effected by the Bills of Sale Acts of 1890 and 1891, 53 & 54 Vict. c. 53, and 54 & 55 Vict. c. 35, but the law under the Acts of 1878 and 1882 is in a very confused state, and the recent decisions upon the construction of them have been numerous and conflicting.

Bill of sight. When a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the collector or comptroller of the circumstance; and he is authorised, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by *bill of sight* for the packages by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay the duties, or shall duly warehouse the same.

In default of perfect entry within three days, such goods are to be taken to the Queen's warehouse; and if the importer shall not, within one month, make perfect entry and pay the duties thereon, or on such parts as can be entered for home use, together with charges of moving and warehouse rent, such goods shall be sold for payment of the duties.—*Customs Consolidation Act*, 76.

Bill of store, in the Customs, is a certified extract from the official records that certain goods have been exported. This certificate is issued on the return of the goods to this country—if claimed to be British.

Bill of sufferance, a license granted to a merchant, to suffer him to trade from one English port to another, without paying custom.

Bill in trade (both wholesale and retail, and among workmen), an account of merchandise of goods delivered, or of work done and performed, etc.

Billa vera, a true bill.

Billet, a soldier's quarters in a civilian's house; (2) the ticket which authorizes him to occupy them.

Billeting Soldiers, finding quarters for them. This is regulated by Part iii. of the Army Act, 1881, which replaces the Annual Mutiny Acts. See ARMY.

Billeting on any inhabitant of the realm without his consent is illegal by 3 Car. I. c. 1, and other acts, but s. 102 of the Army Act, 1881, annually suspends these acts, and s. 104 obliges constables to provide billets. Section 104 subjects all innkeepers, etc., to the billets, and exempts private houses. The *accommodation* to be provided is very precisely laid down by s. 106 and Schedule 2; the maximum *remuneration* is fixed by the Army Annual Act, which is passed (see e.g. 54 Vict. c. 5) every year.

Billets of gold, wedges or ingots of gold. —27 *Edw. III.* c. 27.

Billiards. By 8 & 9 Vict. c. 109, ss. 10—

14, every house 'where a public billiard table or bagatelle board, or instrument used in any game of the like kind is kept' (not being a house licensed for the sale of intoxicating liquor to be consumed on the premises), must be licensed by justices of the peace. The allowing persons to play at billiards for money in a public-house subjects the publican to a penalty; nor may billiards be played in such a house, even by a lodger, after closing hours.

Bills of mortality, returns of the deaths which occur within a certain district.

It was with the view of communicating to the inhabitants of London, to the Court, and the constituted authorities of the city, accurate information respecting the increase or decrease in the number of deaths and the casualties of mortality occurring amongst them, that the bills of mortality were commenced in London after a visitation of the plague, in 1592, but they were not continued uninterruptedly until the occurrence of another plague in 1603, from which period, up to the present time, they have been continued from week to week; excepting during the Great Fire, when the deaths of two or three weeks were given in one bill.

In 1605, the parishes comprised within the bills of mortality included the ninety-seven parishes within the walls, sixteen parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey.

In 1626, the city of Westminster was included in the bills; in 1636, the parishes of Islington, Lambeth, Stepney, Newington, Hackney, and Redriff. Marylebone and St. Pancras, with some others, were never included in the bills. The enactments providing for the registration of births, deaths, and marriages, now secure full statistics on these subjects. Consult the annual report of the Registrar-General of Births, Deaths, and Marriages in England; and see BIRTHS, MARRIAGES, and BURIALS.

Bill-stickers. See 25 & 26 Vict. c. 102, s. 90, as to defacing property of metropolitan vestry, and 2 & 3 Vict. c. 47, s. 54, subs. 10, as to defacing property of metropolitan owner or occupier.

Binonium, Vinocium, Brinomium, Vinovia, Binovia, ancient names of Binchester, in the bishopric of Durham.

Bipartite, of two parts.

Birds. Larceny may be committed at Common Law of domestic fowls, as hens, ducks, geese, etc. (1 *Hale P. C.* 511), and of tame pigeons, though unconfined (2 *Den. C. C. R.* 361), and of tame pheasants (1 *F. & F.* 350). The 24 & 25 Vict. c. 96, ss. 21—23, provides, that whoever shall steal, or kill with intent to steal, birds ordinarily kept in a state of confinement, or for any domestic purposes, not being the subject of larceny at Common Law, or shall be in possession of any such bird, or the plumage thereof, knowing the same to have been stolen, shall be punishable on summary conviction by fine or imprisonment. As to unlawfully and wilfully killing or wounding house doves or pigeons under circumstances not amounting to larceny at Common Law, see 24 & 25 Vict. c. 96, s. 23; and see also 24 & 25 Vict. c. 97, s. 41.

Certain wild birds in the United Kingdom are protected during the breeding season, by the Wild Birds' Protection Act, 1880, 43 & 44 Vict. c. 35 (for schedule to which see list of protected birds), replacing 32 & 33 Vict. c. 17 (as to sea birds), 35 & 36 Vict. c. 78, and 39 & 40 Vict. c. 29. This Act of 1880 was amended, as to an exception for birds received from abroad, etc., and by the insertion of larks in the schedule of protected birds, by the Wild Birds' Protection Act, 1881, 44 & 45 Vict. c. 51.

Birretum, or **Birretus**, a thin cap fitted close to the shape of the head; the cap or coif of a judge or serjeant-at-law.—*Spelm.*

Birth, the act of coming into life. The *Roman* law did not consider an infant legitimate which was born later than ten months after the death of the father, or the dissolution of the marriage. It has been the practice in our Courts to consider forty weeks as the more *usual* time, yet they exercise a discretion of allowing a longer time, when the opinions of the faculty, or the peculiar circumstances of the case, are in favour of a protracted gestation.—*Beck's Med. Juris.*

Birth, concealing. See 24 & 25 Vict. c. 100, s. 60, which enacts that every person who shall, by any secret disposition of the dead body of a child, whether such child died before, at, or after his birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, punishable with imprisonment not exceeding two years. The offence was first created by 21 Jac. I. c. 27.

Births, Marriages, and Deaths. By 6 & 7 Wm. IV. c. 86, amended by 7 Wm. IV. and 1 Vict. c. 22, a General Register Office is provided for keeping a register of births, deaths, and marriages in England. The Births and Deaths Registration Act, 1874, 37 & 38 Vict. c. 88, amends the laws relating to the Registration of Births and Deaths in England in important particulars, and consolidates the law relating to the registration of births and deaths at sea. This Act (s. 1) imposes upon the father and mother of a child, and in their default, upon the occupier of a house in which to his knowledge a child

is born, *the duty* of giving information to the registrar within forty-two days. By s. 10 a corresponding obligation to register a death is imposed upon relatives, etc.

The form for general registration of births comprises the time of birth, name, and sex of the child; the name, surname, maiden surname, and profession of the parents; the signature, description, and residence of the informant (who must be the father or mother, or, in case of their inability, the occupier of the house (6 & 7 Wm. IV. c. 86, s. 20); the date of registration and signature of the registrar, and also the child's baptismal name (if any be given after registration, within six months).

That for death comprises the time of death, name and surname, sex, age, profession, and cause of death of the deceased; the signature, description, and residence of the informant (who must be some person present at the death, or in attendance during the last illness, or else the occupier of the house (s. 25)), with the date of registration and the signature of the registrar.

And the universal form for registration of marriages comprises the date of the marriage; the name and surname, age, condition, profession, residence, father's name and surname, and father's profession of each of the parties: together with the place and form of marriage; and the signatures of the person marrying the parties, and of two witnesses.

Searches may be made and certified copies obtained at the General Register Office, or at the office of the superintendent registrar of the district, or from the clergyman, or registrar, or any other person who shall, for the time being, have the keeping of the register books.

By 3 & 4 Vict. c. 92, provision is made for depositing with the registrar-general a number of non-parochial registers and records of births, baptisms, deaths, burials, and marriages, which had been collected by a commission appointed for that purpose, and for rendering such registers and records available as evidence. See 21 Vict. c. 25.

As to the registration of births, deaths, and marriages in Scotland, see 17 & 18 Vict. c. 80; 18 & 19 Vict. c. 29; and 23 & 24 Vict. c. 85.

Bisantium, Besantine, Bezant, an ancient coin, first issued at Constantinople; it was of two sorts—gold, equivalent to a ducat, valued at 9*s.* 6*d.*; and silver, computed at 2*s.* They were both current in England.

Bi-scot, a fine of 2*s.* for not repairing banks, ditches, and causeways.

Bishop [fr. ἐπίσκοπος, Gk.; *biscop*, Sax.], an overseer or superintendent. The chief of the clergy in his diocese or jurisdiction in England, Wales, or Ireland, and the archbishop's suffragan or assistant. A bishop is elected by the Queen's *congé d'élire*, or license to elect the person named by the Queen, in a letter missive, addressed to the dean and chapter; and if they fail to make election in twelve days, the Queen, by letters patent, may nominate whom she pleases. A bishop is said to be installed, and there are four things necessary to his complete title:—(1) election, which resembles the presentation of a clerk to an ecclesiastical benefice; (2) confirmation, resembling admission; (3) consecration, similar to institution; (4) installation, answering to induction. The bishops are the lords spiritual in parliament. A bishop has three powers: (1) a power of ordination, gained on his consecration, by which he confers orders, etc., in any place throughout the world; (2) a power of jurisdiction throughout his see or his bishopric; (3) a power of administration and government of the revenues thereof, gained on confirmation. He has, also, a Consistory Court, to hear ecclesiastical causes, and visits and superintends the clergy of his diocese. He consecrates churches and institutes priests, confirms, suspends, excommunicates, and grants licenses for marriages. He has his archdeacon, dean and chapter, chancellor, who holds his court and assists him in matters of ecclesiastical law, and vicar-general. He grants leases for three lives, or twenty-one years, reserving the accustomed yearly rent.

As to the resignation of archbishops and bishops when incapacitated by age or other infirmities, see 32 & 33 Vict. c. 111, the provisions of which are continued for three years from the end of session 1872, by 35 & 36 Vict. c. 40, and made perpetual by 38 Vict. c. 19. As to Indian bishops, see 37 & 38 Vict. c. 77, s. 13.

Bishop's Court, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts*, for matters limited to them by their commission.

Bishopric, a diocese or see of a bishop.

Bis idem exigi bona fides non purtitur; et in satisfactionibus, non permittitur ampliùs fieri quam semel factum est. 9 Co. 53.—(Good faith does not suffer the same thing to be exacted twice, and in giving damages, it is not allowed to give more than is given at once.)

Bissextile [fr. *bis*, Lat., twice, and *sextilis*, the sixth], leap year, consisting of 366 days, and happening every fourth year, by the

addition of a day in the month of February, which in that year consists of twenty-nine days. Leap year is introduced in order to make up the loss of the six hours by which the course of the sun annually exceeds the 365 days allowed for it in other years. The day thus added was by Julius Cæsar appointed to be the day before the 24th of February, which, among the Romans, was the sixth of the calends, and which, on this occasion, was reckoned twice: whence it was called the *bissextile*. By 21 Hen. III., to prevent misunderstanding, the intercalary day and that next before it are to be accounted as one day. The supernumerary day, in leap years, is added to the end of February, and called the 29th of that month.—*Encyc. Lond.*; 1 *Reeves* c. v. 266. See CALENDAR, post.

Black Act, 9 Geo. I. c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham in Essex, and destroyed the deer there, and committed divers other enormities. Repealed by 7 & 8 Geo. IV. c. 27.

Black Acts, acts printed in the old black letter during the dynasty of the Stuarts in Scotland.

Black book, a book kept in the Exchequer, and at the Admiralty.

Black cap. It is a vulgar error that the head dress worn by the judge in pronouncing sentence of death is assumed as an emblem of the sentence. It is part of the judicial full dress, and is worn by the judges on occasions of especial state.

Black game, heath fowl, in contradistinction to red game, as grouse.

Black mail [fr. *maile*, Fr., a small piece of money], a certain rent of money, coin, or other thing, anciently paid to persons upon or near the borders, who were men of influence, and allied with certain robbers and brigands, for protection from the devastations of the latter; rendered illegal by 43 Eliz. c. 13. Also rent paid in cattle, otherwise called neat-gild; and all rents not paid in silver are called *reditus nigri* (black mail or rents), by way of distinction from the *reditus albi* (blanch-firmes, or white-rents).

Black Rod, Gentleman Usher of, a chief officer of the Queen, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries. During the session of parliament he attends on the peers, and to his custody all peers impeached for any crime or contempt are first committed.—*Black Book*, 255.

Black ward, a sub-vassal, who held ward of the king's vassal.

Bladarius, a corn-monger, mealman, or corn-chandler.

Blade, fruit, corn, hemp, flax, herbs, etc.

Blanch firmes. In ancient times the Crown rents were many times reserved *in libris albis* or blanch firmes, in which case the buyer was holden *dealbare firmam*, i.e., his base money or coin, below standard, was melted down in the Exchequer, and reduced to the fineness of standard silver, or instead thereof, he paid twelve pence in the pound by way of addition.—*Lowndes on Coins*, 5.

Blanch holding, an ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or peppercorn, if required.—20 *Geo. II.* c. 50; 25 *Geo. II.* c. 20.

Blancoforda, the ancient name of Blandford in Dorsetshire.

Blancum Castrum, Blane Castle, in Monmouthshire.

Blank acceptance. An acceptance written on the paper before the bill is made, and delivered by the acceptor, will charge the acceptor to the extent warranted by the stamp.

Blank bar, common bar, a plea in bar, which, in an action of trespass, was resorted to to compel the plaintiff to assign the place where a trespass was committed.

Blank bonds, Scotch securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by the Act 1696, c. 25.

Blank indorsement, when the name of the indorsee is not mentioned.

Blanks, a kind of white money (value 8*d.*) coined by Henry V. in those parts of France which were then subject to England; forbidden to be current in this realm by 2 Hen. VI. c. 9. Also, certain void spaces, sometimes left by mistake, in judicial proceedings, and which, if anything material be wanting, rendered the same void.

Blasphemy [fr. βλάπτω, Gk., to hurt, and φήμη, reputation; βλασφημέω, to speak impiously; *blasphemo*, Lat., to revile.—*Wedgw.*], an offence against God and religion, by denying to the Almighty His Being and Providence, or by contumelious reproaches of our Saviour Christ. Also, all profane scoffing at the Holy Scripture, and exposing it to contempt and ridicule. It is an indictable misdemeanour at Common Law (see *Reg.* v. *Ramsay & Foote*, 15 *Cox C. C.* 231), and, in case the blasphemer has been educated in or at any time made profession of Christianity, by statute 9 & 10 Wm. III. c. 32, which statute (commonly called 'The Blasphemy Act,' though it is only directed against apostasy) imposes disability for any office upon a first

conviction, and imprisonment for three years, with further disabilities, upon a second conviction. See *Cowan* v. *Milbourn*, *L. R.* 2 *Ex.* 230, in which it was held to be a defence to an action for breach of contract to let a room for lectures intended to show that 'the character of Christ is defective,' etc., that the lectures were illegal. And see SWEARING.

Blatum bulgium, the ancient name of Bulness, in Cumberland.

Blaunpain, *alias* **Blancpain**, Whitbread.

Ble, sight, colour, etc.

Bleaching and dyeing. These works were at first regulated by 23 & 24 Vict. c. 78; 25 & 26 Vict. c. 8; 26 & 27 Vict. c. 38; and 27 & 28 Vict. c. 98. By the 33 & 34 Vict. c. 62, however, all these acts are repealed after the 1st Jan., 1872, and the Factory Acts are made to apply to them; and they are now regulated, along with other factories, by the consolidating 'Factory and Workshop Act, 1878.' See FACTORY.

Blench, Blench-holding. See ALBA FIRMA.

Blestium, Old Town, in Herefordshire.

Bleta [fr. *blêche*, Fr.], peat or combustible earth dug up and dried for burning.

Blinks, boughs broken down from trees and thrown where deer are likely to pass.

Blockade [fr. *bloccato*, Ital., military term], the disposition of troops or armed vessels, so as to cut off all external communication with an enemy's port, fortress, city, etc. The term is now generally applied to the blockade of a port by armed vessels. The two essential circumstances necessary to make a good blockade, are—(1) that there be actually stationed at the place a sufficient force to prevent the entry or exit of vessels; and (2) that the party violating it shall be proved to be aware of its existence. With regard to neutral vessels lying at the place where the blockade commences, the rule is, that they may retire freely after the notification of the blockade, taking with them the cargoes with which they may be already laden; but they must not take in any new cargo. The effect of a violation of blockade to the offending party, when captured, is the condemnation usually of both the ship and the cargo. If, however, it can be shown that the parties to whom the cargo belongs were not implicated in the offence committed by the master of the ship, the cargo will be restored. It has sometimes, on the contrary, happened that the owners of the cargo have been found to have been the only guilty parties, in which case the judgment has been for condemnation of the cargo and the restitution of the ship. Consult *Wheaton's Intl. Law.*

Blood, kindred, lineage. It is a maxim that none shall claim as heir, who is not of the blood (i.e., kindred) of the purchaser.—*Co. Litt.* 12 *a.*

Bloodwit, or **Blondveit** [fr. *blod*, Sax., blood, and *wyte*, Old Eng., pity], an amercement for bloodshed; a customary fine, paid as a composition and atonement for shedding or drawing of blood.—*Paroch. Antiq.*

Bloody hand. See BACKBERIND.

Blossevilla, the ancient name of Bloville, Blofield.

Blowing hot and cold. See HOT AND COLD.

Board [fr. *berd*, Du.; *brett*, G., a plank or table], a body of persons having delegated to them certain powers of the central government, as the Board of Trade, the Board of Works, the Board of Admiralty, and the Local Government Board; or elected for the purposes of Local Government, as a Board of Guardians under the Poor Law Acts, a Local Board under the Public Health Act, or elected as directors by the shareholders in public companies.

Boc, a charter.—*Ang.-Sax.*

Beck-hord, or **Book-hoard**, place where books or writings are kept.

Bock-land, Boc-land, or **Beck-land**, one of the original modes of tenure of manor-land, also called charter-land or deed-land, which was held by a short and simple deed under certain rents and free services, and in effect differed in no respect from the free-socage lands, whence have arisen most of the freehold tenants, who hold of particular manors and owe suit and service to the same.—2 *Bl. Com.* 90. And see '*An Inquiry into the Rise and Growth of the Royal Prerogative in England.*' By John Allen, 1839, 143—151; *Kemble's Cod. Diplom. Introd.* ciii.—cvi.; and FOLCLAND.

Bodotrio, the ancient name of the Firth of Forth.

Beduno; the people of Gloucestershire and Oxfordshire were formerly called so.

Body, the main part of any instrument; in deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in *affidavits*, from the title, and jurat, q.v.; also, the term is used in writs to describe the person who is to be taken (as *habeas corpus*).

Body politic [fr. *bodig*, A.S.; *bodhag*, Gael.], the nation; also a corporation.

Boilary, water arising from a salt well belonging to a person who is not the owner of the soil.

Boiler Explosions Act, 1882, 45 & 46 Vict. c. 22, whereby detailed notice of an explosion from any boiler, i.e. (s. 3), 'any closed vessel used for generating steam, or for heating water, or for heating other liquids, or into

which steam is admitted for heating, steaming, boiling, or other similar purposes,' must be sent within twenty-four hours by the 'owner or user,' or their agent, to the Board of Trade, who have power to order an inquiry with respect to the explosion. Boilers used exclusively for domestic purposes, and boilers used in the service of Her Majesty or on board certificated steamships, were exempted from the Act, and so were some boiler explosions in mines, but an amending 'Boiler Explosions Act, 1890,' repeals these exemptions, except those for Crown and domestic boilers.

Boiling to death, the punishment for poisoning inflicted by 22 Hen. III. c. 9, which was repealed by 1 Edw. VI. c. 12.

Bois, wood; *sub-bois*, underwood.

Bois saillis [Fr.], a coppice or copse.

Bolhagium, or **Boldagium,** a little house or cottage.—*Blount.*

Bolorium promontorium. The Land's End.

Bolt, a long narrow piece of silk or stuff.

Bolting [fr. *bolt*, Sax., a house], a private arguing of cases in the Inns of Court. Now discontinued.

Bona. This term, according to the Civil Law, includes all sorts of property, movable and immovable.—*Story's Confl. Laws*, 375.

Bona confiscata, property forfeited for crime to the *fiscus* or public treasury.

Bonæ fidei possessor, in id tantum quod sese pervenerit tenetur.—(A possessor in good faith, is only liable for that which he himself has obtained.)—2 *Inst.* 285.

Bonâ fide, with good faith, implying the absence of all fraud or unfair dealing or acting, whether it consists in simulation or dissimulation. As to 'bonâ fide traveller,' see TRAVELLER.

Bona fides non patitur ut bis idem exigatur. See Maxim, '*Bis idem exigi,' etc.*

Bona forisfacta, goods forfeited; called by the civilians *bona confiscata*, because they belonged to the *fiscus*, or imperial treasury.

Bona gestura, good behaviour.

Bona mobilia, movable effects and goods.

Bona notabilia, notable goods—goods sufficient in amount to require a probate or administration to be taken out under ecclesiastical law. They were fixed by the 93rd canon (excepting in London, where the sum is 10*l.*), to be legal personal estate to the value of 5*l.* or upwards.

The jurisdiction of the Ecclesiastical Courts as to wills and administration is abolished. See PROBATE.

Bona patria, an assize of countrymen or good neighbours; it is sometimes called *assiza bonæ patriæ*, when twelve or more men are chosen out of any part of the country to pass upon an assize. The persons composing it are called *juratores*, because they are to swear judicially in the presence of the party, etc., according to the practice of Scotland.—*Skene.*

Bona vacantia, stray goods. Those things in which nobody claims a property, and which belong to the Crown, by virtue of its prerogative.—1 *Bl. Com.* 298.

Benaught, or **Bonaughty,** an exaction imposed on the people of Ireland, at the will of the lord, for relief of the knights, called *Bonaghti*, who served in the wars.—*Antiq. Hibern.* 60.

Bona villa, de Bonevil.

Bona waviata, goods waved or thrown away by a thief in his flight for fear of being apprehended. They are given to the Crown by the law, as a punishment upon the owner for not himself pursuing the felon and recovering his goods.—1 *Bl. Com.* 296.

In the Roman law it was originally the property which a person left at his death, without having disposed of it by will, and without having any *hæres*. Such property was open to occupancy; and so long as the strict laws of inheritance existed, such an event must not have been uncommon. A remedy was, however, found by the *bonorum possessio* of the *prætor.*—*Smith's Dict. of Antiq.*

Bencha [fr. *bonna* or *bunna*, Old Lat.], a rising bank, the bounds of fields.

Bond [fr. *binda, band, bunden*, A.S., to bind], a written acknowledgment or binding of a debt under seal. See DEED. No technical form of words is necessary to constitute a bond. The person giving the bond is called the obligor, and he to whom it is given the obligee. A bond is called single when it is without a penalty, and an obligation when it contains a penalty, which is generally double the amount of the principal sum secured, although only the sum actually owing, with interest, can be recovered. See 4 & 5 Anne c. 16, ss. 12 & 13; and 8 & 9 Wm. III. c. 11, s. 8.

A bond conditioned either to do something which is *malum in se* or *malum prohibitum*, or to omit the doing of something which is a duty, or to encourage such crimes and omissions, is void. A bond may be valid in part and void in part, if such parts are separable. See RESIGNATION BOND.

The 9 Geo. IV. c. 94, validates certain bonds, covenants, and other assurances, for resignation of ecclesiastical preferments in certain cases.

There are two kinds of *post obit* bonds: (1) Where the sum secured is greater than the sum borrowed, but to be payable only upon a contingency, such as the obligor-expectant surviving his ancestor. (2) Where

the sum secured is greater than the sum borrowed, but it is to be paid on the death of a particular person, whether the obligor be then alive or not, the time of payment being contingent only. The usury laws were abolished by 17 & 18 Vict. c. 90. See *Chesterfield* v. *Janssen*, 2 *Ves.* 125 (1751), and 1 *Wh. & Tud. L. C. Ed.* 6, vol. i., 624, as to the interference of Equity in the case of frauds upon expectant heirs.

Bonds to procure marriage (or marriage brocage bonds), or to restrain marriage, or for immoral considerations, such as *future*, but not *past*, cohabitation, and also in *total* restraint of trade are void.

Bondage, slavery; also a kind of tenure or occupation.

Bond-creditor, a creditor whose debt is secured by a bond.

Bondsman, a surety.

Bond-tenants, copyholders and customary tenants are sometimes so called.—*Calthorp on Customs of London.*

Boni judicis est ampliare jurisdictionem.—(It is the duty of a good judge to enlarge his jurisdiction, i.e., 'to amplify the remedies of the law, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice.')

Boni judicis est causas litium dirimere et interest reipublicæ ut sit finis litium.—(It is the duty of a good judge to prevent litigation; and it concerns the State to end law suits.)

Boni judicis est judicium sine dilatione mandare executioni. Co. Litt. 289.—(It is the duty of a good judge to order execution without delay.)

Bonis non amovendis (that the goods be not removed), a writ addressed to the sheriff, where error is brought, commanding that the person against whom judgment is obtained be not suffered to remove his goods, till the error be tried and determined.—*Reg. Orig.* 131.

Bonitarian, the right of possession. *Civil Law.*

Bonium, seu **Bovium**, Boverton, or Cowbridge, in Glamorganshire; also Bangor, in Flintshire.

Bono et malo (*Writ de*), an abolished writ of gaol delivery, which issued for every prisoner.

Bonum defendentis ex integra causa, malum ex quolibet defectu. 11 Co. 68.—(The good of a defendant arises from a perfect case, his harm from any defect whatever.)

Bonus, premium or advantage; an occasional extra dividend; a gratuity.

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert.—(A good judge decides according to what is just and good, and prefers equity to strict law.)—*Co. Litt.* 34.

Book of responses, an account which the directors of the Chancery kept to enter all non-entry and relief duties payable by heirs who take precepts from Chancery.—*Scotch Law.*

Books. All the volumes which contain authentic reports of decisions in English courts, from the earliest times to the present, are called, *par excellence*, The Books. See REPORTS.

Books, copyright in. See 5 & 6 Vict. c. 45; and COPYRIGHT.

Booting, or **Boting Corn** [fr. *bote* or *boot*, Sax., compensation], rent corn, anciently so called.

Booty of War, property captured in war on land which falls to the forces capturing by grace of the Crown or to the Crown itself. By 3 & 4 Vict. c. 65, s. 22, the jurisdiction in matters of booty of war is in the judge of the Prize Courts (who is also judge of the Admiralty Court), on a reference by the sovereign. See *Banda and Kirwee Booty*, *L. R.* 4 *Adm. and E.* 436.

Bercovicus, Berwick-upon-Tweed.

Bordagium. See BORDLODE.

Bordaria [fr. *bord*, Sax.; *domus*, Lat.], a cottage.

Bordarii, or **Bordamanna** [fr. *bords*, Old Gall., limits, borders], boors, husbandmen, cottagers.—*Domesday.*

Bord-brigch [fr. *borg-bryce*, or *burg-brych*, Sax.], a breach or violation of surety-ship, pledge-breach, or breach of mutual fidelity.

Border Warrant [fr. *bord*, Fr., edge, *margin*], a process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, *judicio sisti.*—*Bell's Dict.*

Bord-halfpenny [fr. *bord*, Sax., a table, and *halpeny*, or half-penny], a customary small toll paid to the lord of a town for setting up boards, tables, booths, etc., in fairs or markets.

Bordlands, the demesnes which a lord keeps in his own hands for maintenance of his board or table.—*Bract.* l. 1, t. 3, c. ix.

Bordlode, or **Bordage**, a service required of tenants to carry timber out of the lord's woods to his house, or the quantity of food or provision which the *bordarii* or *bordmen* paid for their *bord-lands.* The old Scots had the term of *burd* and *meet-burd* for victuals and provisions, and *burden-sack* for a sack full of provender, whence probably came our word burden.—*Spelm.*

Bord-service, a tenure of bord-lands.

Borel-folk, country people, from the Fr., *boure floccus*, a lock of wool, because they covered their heads with such stuff.—*Blount.*

Borough, originally a walled town or other fortified place. In the Reform Act, 1832, by s. 79, the word means a town entitled to return a member to Parliament, or 'parliamentary borough,' and in the Municipal Corporations Act, 1882, a town incorporated for the purposes of internal Government, and subject to the Municipal Corporation Acts, or 'municipal borough.' See MUNICIPAL CORPORATION.

Borough Courts, private and limited tribunals, held by prescription, charter, or act of parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits, and receive justice at home; in boroughs subject to the Municipal Corporation Acts they are termed 'borough civil courts' and regulated by ss. 175—188 of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, but they are very few in number. See, further, INFERIOR COURTS.

Borough English, a custom evidently of Saxon origin, and so named to distinguish it from the Norman customs. By this custom, which is occasionally met with in burgage tenemental lands, if a person have many sons, and die intestate, the youngest son inherits all the realty, which belonged to his father, situated within such borough. It is based on the assumption that the youngest son, on account of his tender age, is not so capable as the rest of his brethren to keep himself. Among the pastoral tribes, the sons, as soon as they attained the proper age, migrated from the paternal habitation, with an allotment of cattle, to seek a residence elsewhere; the youngest son usually continued with his father, and thus became the heir to his house.

The custom obtains in the manor of Lambeth, Surrey, in the manors of Hackney, St. John of Jerusalem in Islington, Heston and Edmonton in Middlesex, and in other counties.

Borough Fund, the revenues of a municipal borough derived from the rents and produce of the land, houses, and stocks belonging to the borough in its corporate capacity, and supplemented where necessary by a borough rate. See ss. 138—144 of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, which specifies the purposes to which it is legally applicable, and allows (s. 141) orders of a town council for payment of money out of it to be questioned by the High Court on certiorari; and see LEEMAN'S ACT.

Borough-heads, borough-holders, borsholders, or burs-holders.

Borough-reeve, the chief municipal officer in towns unincorporated before the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76.

Borough-sessions, courts established in boroughs under the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50. They are held by the recorders of the respective boroughs once a quarter, or oftener if they think fit, and at times to be fixed by them. The Court has 'cognizance of all crimes, offences, and matters' cognizable by the County Quarter Sessions, whose powers extend to all boroughs which may not have obtained a separate court by petition under s. 162 of the Municipal Corporations Act, 1882.

Borsholder, borough's ealder, or head-borough, supposed to be the discreetest man in the borough, town, or tithing. By the Saxon laws there was a general custom of bail throughout the country, by which each man was answerable for his neighbour.

Bortmagad [fr. *bord*, Sax.; *domus*, Lat., and *magad*, *ancilla*], a housemaid.—*Spelm.*

Boscage [fr. *bosco*, Ital.; *silva*, Lat.], food which wood and trees yield to cattle, as mast, etc.

Boscaria, woodhouses, or ox-houses, from *bos*, Lat.

Bosco, de, Bois, Boys.

Boscoarso, de, Brentwood, or Burntwood.

Bosco Boardi, de, Borhard.

Boscus [fr. *bosco*, Ital.; *bois*, Fr.], all manner of wood; boscus is divided into high wood or timber, *hautbois*; and coppice, or underwoods, *sub-boscus*, *sub-bois*; but the high wood is properly called *saltus*, and in Fleta we read it *maeremium*.

Bossinnus, a rustic pipe.

Bostar, an ox-stall.

Bote [fr. *bot*, A.S.; *beton*, to repair, synonymous with *estovers*, Fr.; *estoffer*, to furnish], necessaries for the maintenance and carrying on of husbandry. The owner of an estate for life or for years is entitled, unless expressly restrained by the terms of the conveyance or devise, to reasonable estovers or botes, i.e., necessary wood, such as house-bote, plough-bote, cart-bote, and hay-bote, or hedge-bote. *House-bote* is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed fire-bote; *plough-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences. The word also signifies reparation for any damage or injury done, as *man-bote*, which was a compensation or amends for a man slain, etc.—*Lamb*, c. xcix.

Boteless, or **Bootless,** a vain attempt, without emendation.

Botellaria, a buttery or cellar, in which the *butts* and *bottles* of wine and other liquors are deposited.

Botha, a booth, stall, or standing in a fair or market.—*Mon. Angl.* 2 par. fo. 132.

Bothagium, or **Boothage**, customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.—*Paroch. Antiq.* 680.

Bothna, or **Buthna**, a park where cattle are enclosed and fed; a barony, lordship, etc. —*Skene.*

Botiler of the King [*pincerna regis*, Lat.], an officer that provides the king's wines, who might (*Fleta*, l. 2, c. xxi.), by virtue of his office, choose out of every ship laden with sale wines, one cask before the mast, and one behind.—25 *Edw. III.* st. 5, c. 21.

Bottom [Old English], a valley.

Bottomry bond, or **Contract**, also **Bottomree**, or **Bummaree**, species of mortgage or hypothecation of a ship, by which her keel or bottom is pledged (*partem pro toto*) as a security for the repayment of a sum of money. If the ship be totally lost, the lender loses his money; but if she returns safely, he recovers his principal, together with the interest agreed upon. Such bonds are allowed as valid in all trading nations, for the benefit of commerce, and as a *pretium periculi* for the extraordinary hazard run. —*Abbot on Shipping*, p. 2, c. iii. See RESPONDENTIA.

Bouche of Court, or **Budge of Court**, a certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

Bough of a tree, a symbol which gave seisin of land, to hold of the donor *in capite*.

Bought and sold notes. The practice of licensed brokers is to keep books wherein they enter the terms of any contract they effect, and the names of the parties. Such entry, when signed by the broker, is a contract legally binding, as when the broker for a seller treats with a buyer, he is deemed the agent of both. It is the custom for the broker to deliver a transcript or memorandum of the entry in his book to each party, which is called a *bought* or *sold note*, the bought note being given to the seller, and the sold note to the buyer. But this is stated conversely in some of the books. As these notes contain the essential parts of the bargain, they will suffice in the absence of a corresponding entry in the broker's book; but if these notes describe the particulars differently or incorrectly, as one species of goods for another, or erroneously state the terms, no contract arises, and a variation of this nature cannot be corrected by a reference to the broker's book.—Consult *Addison on Contracts*, 8th ed., 917.

Bound, or **Boundary** [fr. *borne*, *bone*, Fr., a limit], the utmost limits of lands, whereby the same is known and ascertained. See ABUTTALS.

Boundaries. The Boundary Act, 2 & 3 Wm. IV. c. 64, as amended by the Boundary Act, 1868, 31 & 32 Vict. c. 46, fixes the divisions of counties, and the limit of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament. The corresponding Acts for Scotland are 2 & 3 Wm. IV. c. 65, and 31 & 32 Vict. c. 48; and for Ireland, 2 & 3 Wm. IV. c. 89, and 31 & 32 Vict. c. 49.

The Boundaries of Municipal Boroughs are fixed under 5 & 6 Wm. IV. c. 76, ss. 7, 8, and 6 & 7 Wm. IV. c. 103, in England and Wales.

The Local Government Boundaries Act, 1887, 50 & 51 Vict. c. 61, constituted a Commission to inquire into the best mode of so adjusting the boundaries of counties and other areas of local government as to arrange that no poor law union, municipal borough, sanitary district, or parish should be situate in more than one county; and various provisions for the boundaries of counties and other areas for the purpose of the election of county councils are contained in ss. 50-63 of the Local Government Act, 1888.

Boundaries of Archdeaconries, etc. See 37 & 38 Vict. c. 63.

Bound-bailiffs, officers who arrest debtors, etc., and who enter into bonds for their good behaviour. The vulgar phrase 'bum-bailiff' is, perhaps, a corruption of this word. See BUM-BAILIFF.

Bounty, a premium paid by Government to the producers, exporters, or importers of certain articles, or to those who employ ships in certain trades, with a view of encouraging the establishment of some new branch of industry, or of fostering and extending a trade that is believed to be of paramount importance. Bounties have been generally abolished in England.

Bounty of Queen Anne, a royal charter, which was confirmed by Queen Anne, 2 Anne c. 11, whereby all the revenue of first-fruits and tenths (see those titles) is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings, and for advancing money to incumbents for rebuilding parsonage-houses. After the appropriation of the revenue arising from the payment of first-fruits and tenths to the augmentation of small livings, it was considered a proper extension of this principle to exempt the smaller livings from the encumbrance of those

demands; and for that end, the bishops of each diocese were directed to inquire and certify into the Exchequer, what livings did not exceed 50*l.* a year, according to the improved value at that time; and it was further provided that such livings should be discharged from those dues in future. It has been still further regulated by subsequent statutes; viz., 5 Anne c. 24; 6 Anne c. 27; 1 Geo. I. st. 2, c. 10; 3 Geo. I. c. 10; 43 Geo. III. c. 107; 45 Geo. III. c. 84, s. 4; 1 & 2 Wm. IV. c. 45; 1 & 2 Vict. cc. 20, 23, ss. 3, 4; c. 106, ss. 72 and 119; c. 107, s. 10; 2 & 3 Vict. c. 49; 3 & 4 Vict. cc. 20 and 113, s. 76; 4 & 5 Vict. c. 39, s. 4; 6 & 7 Vict. c. 37; 28 & 29 Vict. c. 69; and 33 & 34 Vict. c. 89 (Superannuation Act).

These trustees were erected into a corporation, and have authority to make rules and orders for the distribution of this fund. The principal rules established by them are, that the sum to be allowed for each augmentation shall be 200*l.*, to be laid out in land, which shall be annexed for ever to the living; and that this donation shall be made, first, to all livings not exceeding 10*l.* a year, then to all livings not above 20*l.*, and so in order, whilst any remain under 50*l.* a year. But when any private benefactor advances 200*l.*, the trustees give another 200*l.* for the advancement of any living not above 45*l.* a year, though it may not belong to that class of livings which they are then augmenting.

Bovata terræ, as much land as an ox can plough.—See OXGANG. 8 bovatæ make 1 carucate.

Boverium, or **Boveria,** an ox-house.

Bovettus, a young steer, or castrated bullock.

Bovicula, a heifer, or young cow.

Bovill's (Sir W.) Act, to amend the law relating to the procedure in petitions of right. —23 & 24 Vict. c. 34.

Bow-bearer, an under officer of the forest, whose duty it is to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented without any concealment, in the next court of attachment, etc.—*Crompt. Juris.*, 201.

Bowling, Game of, legalised by 8 & 9 Vict. c. 109.

Bowyers, manufacturers of bows and shafts. An ancient company of the city of London.—12 *Edw. IV.* c. 2; 33 *Hen. VIII.* c. 6; 8 *Eliz.* c. 10.

Boys, employment of, in factories, workshops, etc. See CHILDREN; FACTORY ACTS.

Bracelets, hounds or beagles of the smaller or slower kinds.

Bracenarius, a huntsman or master of the hounds.

Bracetus, a hound.—*Mon. Ang.* t. 2, 283.

Brachylogy [fr. βραχύς and λόγος, Gk.], the method of expressing a sentence or argument concisely.

Bracinum, a brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina,* a brewhouse.

Bracton, the author of the Latin treatise entitled *De Legibus et Consuetudinibus Angliæ.* Bracton's book, compared with that of Glanville, is a voluminous work. It is divided into five books, and these into tracts and chapters. See 2 *Reeves' Hist.* c. viii. 86, note (*a*), for an analysis of the several divisions of the chapters, and a complete digest of the contents of this venerable code. The rules of property are explained; the proceedings in actions, through the minutest steps, are investigated and developed; while every proposition is supported by fair deduction, or corroborated by the authority of some adjudged case, so that the reader never fails of deriving instruction or amusement from the study of this scientific treatise on our ancient laws and customs. Bracton was deservedly looked up to as the first source of legal knowledge, even down to the time of Lord Coke, who seems to have made this author his guide in all inquiries into the foundation of our law.

The author of this work is usually styled Henry de Bracton; though he passed, as fancy or mistake may have dictated, by the names of Bryeton, Britton, Briton, Breton. He is said to have lived at the latter part of the reign of Henry III. There is internal evidence that the book was written before the fifty-second year of this king; for it takes no notice of the writ of entry in the *post,* nor of the regulations about distresses, attachments, guardians in socage, and other points, made by the statute of Marlbridge; and as he quotes a case in the forty-sixth year of this king, it must follow that the book was written, or, at least, received the author's last hand, some time between that and the fifty-second year. It is said that Bracton was a judge, and, speaking of some judges of his time he calls them *insipientes, et minus doctos, qui cathedram judicandi ascendunt antequam leges didicerint* (Brac. I.).—*Hales' Hist.* 189. In Lincoln's Inn Library is an ancient MS. copy of Bracton, which is said to be more correct than the printed copies. The work was edited, with an English translation, by Sir T. Twiss in the Rolls Series.

Brahmen, Brahmin, Brahman, or **Bramin,** a divine, a priest, the first Hindu caste.

Branding in the *hand* or *face* with a hot iron. A punishment inflicted by law for various offences, after the offender had been allowed benefit of clergy. Abolished by 3 Geo. IV. c. 38.

Brasiator [fr. *brasium*, Lat., malt], a maltster, a brewer.—*Old Records.*

Brasium, malt.

Brawling [fr. *brailler*, Fr., to brawl], the offence of quarrelling, or creating a disturbance in the church or churchyard, punished by 5 & 6 Edw. VI. c. 4 (repealed by 9 Geo. IV. c. 31, s. 1), by cutting off the party's ears, etc. By 24 & 25 Vict. c. 32, the jurisdiction of Ecclesiastical Courts in England and Ireland, in suits for brawling, was abolished as against persons not in holy orders; and persons guilty of riotous, violent, or indecent behaviour in churches and chapels of the Church of England or Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of 18 & 19 Vict. c. 81, or in churchyards or burial grounds, on conviction before two justices were made liable to a penalty of not more than 5*l.*, or imprisonment for any term not exceeding two months.

Breach of Close, an unwarrantable entry on another's land; for every man's land is in the eye of the law enclosed and set apart from his neighbour's, and that either by a visible and material fence, as one field is divided from another by a hedge, or by an invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. Every such entry or breach of a man's close carries necessarily along with it some damage or other.

Breach of Covenant, a violation of an agreement contained in a deed either to do or not to do some act; it is a civil injury.—3 *Bl. Com.* 155.

Breach of Duty, the not executing any office, employment, trust, etc., in a proper manner: for every person who undertakes the duties of any office, etc., contracts with those who employ and trust him to perform it with integrity, diligence, and skill; and if by his want of either of those qualities any injury accrues to individuals, they have therefore their remedy in damages by an action.

Breach of Peace, offences against the public, which are either actual violations of the peace, or constructive violations, by tending to make others break it. Both of these species are either felonious or not felonious. The *felonious* breaches are: (1) The riotous assembling of twelve persons or more, and not dispersing upon proclamation. (2) The riotous demolishing of churches, houses, buildings, or machinery (24 & 25 Vict. c. 97, ss. 11 & 12). (3) Maliciously sending, delivering, or uttering, or directly or indirectly causing to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person (24 & 25 Vict. c. 100, s. 16). The remaining offences are not felonious: (4) Affrays. (5) Riots, routs, and unlawful assemblies, which must have three persons at least to constitute them. (6) Tumultuously petitioning, as to which see PETITION. (7) Forcible entry or detainer, which is committed by violently taking or keeping possession of lands or tenements with menaces, force, and arms, and without the authority of the law. (8) Riding, or going armed with dangerous or unusual weapons, terrifying the good people of the land. (9) Spreading false news (12 Rich. II. c. 11). (10) False and pretended prophecies, with intent to disturb the peace, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. These are the actual breaches of the peace; the remainder are constructive. (11) Challenges to fight, either by word or letter, or being the bearer of such challenges. (12) Libels, which, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency; but in the sense of a constructive breach of the peace, they are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule.

Breach of pound. See POUND BREACH.

Breach of prison, an escape by a prisoner lawfully in prison.

Breach of promise of marriage. See MARRIAGE, PROMISE OF.

Breach of trust, a violation of duty by a trustee, executor, or other person in a fiduciary position.

A breach of trust was not a criminal offence until 20 & 21 Vict. c. 54. It is now punishable, by 24 & 25 Vict. c. 96, s. 80, replacing that act, as a misdemeanour, with fine and imprisonment.

Bread. The acts relating to the sale of bread are 3 Geo. IV. c. 106 (metropolis); and 6 & 7 Wm. IV. c. 37, which prescribes that bread 'except French, or fancy bread, or rolls,' must be sold by *weight*, etc.

Breaking bulk, a term formerly used to signify the separation of goods in the hands of a bailee which made him liable for felony. Since the 24 & 25 Vict. c. 96, this distinction is immaterial.

Breaking of arrestment, is the contempt of the law committed by an arrestee who disregards the arrestment used in his hands, and pays the sum or delivers the goods arrested to the debtor. The breaker is liable to the arrester in damages.—*Scotch Dict.*

Breoca [fr. *brèche*, Fr.], a breach or decay.

Brecina. See BRACINUM.

Brede (adj.), broad.—*Bract.* Also in Saxon, deceit.

Bredwite [fr. *bread* and *wite*, Sax.], a fine or penalty imposed for defaults in the assize of bread.—*Paroch. Antiq.* 114.

Brehon, the Irish name for a judge.

Brehon law, a rule of right, unwritten but delivered by tradition from one to another, in which oftentimes there appeared great show of equity in determining the right between party and party, but in many things repugnant quite, both to God's laws and man's. This law was formally abolished, by 40 Edw. III., it being unanimously declared to be indeed no law, but a lewd custom crept in of later times.—*Spencer's State of Ireland,* 1513; *Hale's Hist.* 217; 1 *S. S.* 82.

Brenagium, a payment in bran, which tenants anciently made to feed their lord's hounds.

Brephotrophi, curators of places for receiving foundlings.

Bresina, wether-sheep.—*Mon. Ang.* t. 1, c. 406.

Bretoyse, or **Bretoise,** the law of the Welsh marches, observed by the ancient Britons.

Bretwalda (*wielder*), ruler of the Britons.

Breve, a writ, by which a person is summoned or attached to answer an action, complaint, etc., or whereby anything is commanded to be done in the Courts, in order to justice, etc. It is called *breve,* from the brevity of it, and is addressed either to the defendant himself, or to the chancellors, judges, sheriffs, or other officers. *Skene, de verb 'Breve.'* See WRIT; ORIGINAL WRIT; JUDICIAL WRIT.

Breve ita dicitur, quia rem de quâ agitur, et intentionem petentis, paucis verbis breviter enarrat. 2 Inst. 39.—(A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.)

Breve judiciale debet sequi suum originale, et accessorium suum principale. Jenk. Cent. 292.—(A judicial writ ought to follow its original, and an accessory its principal.)

Breve judiciale non cadit pro defectu formæ. Jenk. Cent. 43.—(A judicial writ fails not through defect of form.)

Breve perquirere, to purchase a writ or license of trial, in the King's Courts, by the plaintiff, *qui breve perquisivit*; whence the usage of paying 6*s.* 8*d.* fine to the Crown where the debt is 40*l.*, and of 10*s.* where the debt is 100*l.*, etc., in suits and trials for money due upon bond, etc.

Breve de recto, a writ of right or license for a person ejected out of an estate, to sue for the possession of it.

Brevet, a commission conferring on an officer a degree of rank immediately above that which he holds in his particular regiment; without, however, conveying a power to receive the corresponding pay. Brevet rank does not exist in the royal navy, and in the army it neither descends lower than that of captain, nor ascends above that of lieutenant-colonel.

Brevia magistralia, official writs framed by the Clerks in Chancery to meet new injuries, to which the old forms of actions were inapplicable.—4 *Reeves,* 426.

Brevia selecta, abbrev., *Brev. Sel.* [Lat.], choice writs or processes.

Brevia, tam originalia quam judicialia, patiuntur Anglica nomina. 10 Co. 132.—(Writs, as well original as judicial, bear English names.)

Brevia testata, written memoranda, introduced to perpetuate the tenor of a conveyance and investiture, when grants by parol became productive of dispute and uncertainty. To this end the persons who attended as witnesses were registered in the deed, and this was anciently done without their own signatures (writing not then being a general accomplishment), for they merely heard the deed read, and then the clerk added their names in a sort of memorandum, thus, '*his testibus, Johanne Moore, Jacobo Smith, et aliis, ad hanc rem convocatis.*'—The modern system of conveyancing is an elaborate extension of these *brevia testata.*—2 *Bl. Com.* 307.

Brevibus et rotulis liberandis, a writ or mandate to a sheriff to deliver to his successor the county, and appurtenances, with the rolls, briefs, remembrance, and all other things belonging to his office.—*Reg. Orig.* 295.

Bribery [fr. *briber*, Fr., to devour or eat greedily], the taking by, or giving to, a person in a judicial or public office, of any fee, gift, reward, or brocage, to influence his behaviour in his office, or the taking or giving a reward for appointing another to a public position. As to bribery at elections for members of parliament, see the Corrupt Practices Acts of 1854 and 1883.

Bribour [fr. *bribeur*, Fr.], a pilferer of other men's goods.—28 *Edw. II.* c. 1.

Bricks, the duties of excise on, were repealed by 13 & 14 Vict. c. 9.

Bricolis, an engine by which walls were beaten down.—*Blount.*

Bridewell, a house of correction.

Bridge [γέφυρα, Gk.; *pons*, Lat.; *bric*, Sax.], a building erected across a river, ditch, valley, or other place, for the common benefit of travellers. Public bridges, which are of general convenience, are of common right to be repaired by the whole inhabitants of that county in which they lie. If the bridge be within a city or town corporate, the inhabitants of such city or town corporate shall repair it; if within a riding, the inhabitants of the riding shall repair it. The inhabitants of a county, etc., are, therefore, bound to repair every public bridge within it; unless, when indicted for the non-repair of it, they can show their plea that some other person is liable *ratione tenuræ*: and every bridge *in a highway* is, by 22 Hen. VIII. c. 5, deemed a public bridge for this purpose. If part of a bridge be within one county, etc., and the other part within another county, etc., each party shall repair that part of the bridge which is within it. Besides the bridge, the county is bound to repair 300 yards of the road adjoining either end of it. As to the offence of pulling down, throwing down, or destroying a bridge, see 24 & 25 Vict. c. 97, ss. 29 and 33.

The management of county bridges is entrusted to County Councils by s. 3, par. viii., of the Local Government Act, 1888; and by s. 6 of the same Act the County Councils may purchase bridges not being county bridges, and may erect new bridges. See HIGHWAYS, and *Burn's Justice, voce 'Bridges.'*

Bridge-masters, persons chosen by the citizens, who have certain fees and profits belonging to their office, as in the case of London Bridge.— *Lex. Lond.* 283.

Brief [fr. *brevis*, Lat.; *brief*, Dutch, a letter], an abbreviated statement of the pleadings, proofs, and affidavits in any legal proceeding, with a concise narrative of the facts and merits of the plaintiff's case, or the defendant's defence, for the instruction of counsel at the trial or hearing.

Brief al'evesque, a writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite.*—1 *Keb.* 386.

Brief, or Brieve, out of the Chancery, a writ issued in Scotland in the name of the sovereign in the election of tutors to minors, the cognoscing of lunatics or of idiots, and the ascertaining the widow's terce; and sometimes in dividing the property belonging to heirs-portioners. In these cases only brieves are now in use.—Consult *Bell's Scotch Law Dict.*

Brief, Papal, the Pope's letter upon matters of discipline.

Briefs for collecting charities, licenses to make collection for repairing churches, restoring loss by fire, etc.—4 *Anne*, c. 14.

Briga [fr. *brigue*, Fr.], debate, contention.

Brigandine [*lorica*, Lat.], a coat of mail or ancient armour, consisting of numerous jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M. c. 2; Jer. xlvi. 4, and li. 3.

Brigantes, the ancient name for the inhabitants of Yorkshire, Lancashire, Durham, Westmoreland, and Cumberland.

Brigbote, or **Bragbote** [fr. *brig*, Sax.; *pontus*, Lat; and *bote*, *compensatio*], the contribution to the repair of bridges, walls, and castles, which by the old laws of the Anglo-Saxons might not be remitted.—*Fleta*, l. 1, c. xlvii.

Bristol bargain, where A. lends B. 1000*l.* on good security, and it is agreed that 500*l.*, together with interest, shall be paid at a time stated; and as to the other 500*l.*, that B., in consideration thereof, should pay unto A. 100*l.* *per annum* for seven years.

British America. See Fur Trade Act, 1 & 2 Geo. IV. c. 66, and North-Western Territories Act, 22 & 23 Vict. c. 26, and 'The British North America Act,' 30 & 31 Vict. c. 3, and see WASHINGTON, TREATY OF, and the next title.

British Columbia, the territory on the north-west coast of North America, once known by the designation of New Caledonia. Its government is provided for by 21 & 22 Vict. c. 99. Vancouver Island is united to it by the 29 & 30 Vict. c. 67. See 33 & 34 Vict. c. 66.

British Kaffraria. See 28 & 29 Vict. c. 5.

British Pharmacopœia. See 25 & 26 Vict. c. 91, s. 2.

Britton, a small French law tract under the name of Britton, thought by some to have been composed under the direction of Edward I., by others considered as nothing more than an abridgment of Bracton, with the subsequent alterations that had been made in the law; and to be called Britton, as one of the names of Bracton himself.—2 *Reeves*, c. xi. p. 280.

Broad-arrow, used as a Government mark, is thought to have had a Celtic origin; and the so-called arrow may be the ⟶ or *d*, the broad *a* of the Druids. This letter was typical of superiority either in rank and authority, intellect, or holiness; and is believed to have stood also for king or prince. Public Stores are marked with the Broad Arrow. See Public Stores Act, 1875.

Brocage, the wages or hire of a broker; also termed *Brokerage*.—12 *R. II.* c. 2.

Brocella [fr. *brusca*, obs. Lat.; *broce*, Fr.], a wood, a thicket, or covert of brushwood, hence *brouce* of wood, and *brousing* of cattle.

Brode-halfpenny, or broad-halfpenny. See BORD-HALFPENNY.

Broken Stowage, that space in a ship which is not filled by her cargo.

Broker [fr. *broceur*, Fr.; a person who breaks into small pieces], an agent employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation, for a compensation commonly called a brokerage. Domat says (B. 1, tit. 17, s. 1, art. 1):—'The engagement of a broker is like to that of a proxy, a factor, and other agent; but with this difference, that the broker being employed by persons who have opposite interests to manage, he is, as it were, agent both for the one and the other, to negotiate the commerce or affair in which he concerns himself. Thus his engagement is twofold, and consists in being faithful to all the parties, in the execution of what each one of them entrusts him with. And his power is not a trust, but to explain the intentions of both parties, and to negotiate in such a manner as to put those who employ him in a condition to treat together personally.

Where he is employed to buy or sell goods, he is not entrusted with the custody or possession of them, and is not authorized to buy or sell them in his own name. He is strictly, therefore, a middle-man, or intermediate negotiator between the parties, and for some purposes (as that of signing a contract within the Statute of Frauds) he is treated as the agent of both parties, but primarily he is deemed merely the agent of the party by whom he is originally employed. A broker being personally confided in, cannot ordinarily delegate his authority to a sub-agent or clerk under him, or to any other person, unless the principal give an assent, either expressed or implied, thereto. A broker differs from an auctioneer in two respects; a broker may buy as well as sell, but an auctioneer can only sell; a broker cannot sell personally at public auction, for that is the appropriate function of an auctioneer, but he may sell at private sales, which an auctioneer (as such) does not.

There are various sorts of brokers now employed in commercial affairs, whose transactions form, or may form, a distinct and independent business. Thus, for example, there are exchange and money-brokers, stock-brokers, ship-brokers, and insurance-brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway scrip, goods, stocks, ships, or cargoes; or in procuring freights or charter-parties. The character of a broker is also sometimes combined in the same person with that of a factor. In such cases, we should carefully distinguish between his acts in the one character and in the other, as the same rules do not always apply to each. See FACTOR. The Romans called brokers *Proxenetæ*.

Brokers in the city of London were by 33 & 34 Vict. c. 60, and 47 Vict. c. 9, the London Brokery Relief Acts of 1870 and 1884, relieved from the necessity of being admitted by the Court of Aldermen and other restrictions to which they were formerly subject.

As to frauds by brokers, see 24 & 25 Vict. c. 96, s. 75 *et seq.*

The term 'broker' is also applied to the agent or 'bailiff' employed by a landlord to distrain. (See 57 Geo. III. c. 93, s. 6, whereby every broker must give a copy of his charges to the person on whose goods he distrains, and *Distress.*) County Court bailiffs may be authorized by a County Court Judge to act as brokers to sell goods taken in execution under the County Court Act, 1888. (See s. 157 of that Act.)

Brokerage, the commission or per-centage paid to brokers on the sale or purchase of bills, funds, goods, etc.

Bronze Coinage. See 33 & 34 Vict. c. 10, repealing 22 & 23 Vict. c. 30.

Brooke's (Sir Robert) Abridgment, a work printed in 1568, and an improvement on the plan of Statham and Fitzherbert. The cases are here arranged with more strict regard to the title; but the order in which they are strung together is very little better, being generally guided only by the chronology. He observes one method, which contributes, in some degree, to draw the cases to a point; he generally begins a title with some modern determination in the reign of Henry VIII., as a kind of rule to guide the reader in his progress through the heap of ancient cases which follow. He abridges, with great care, in the language of his own time, sometimes adding a short observation, or *quære*, furnished by the experience of later times. So that, upon the whole, the substance of the year-books, to which it is an excellent repertory, is conveyed in this one volume, in a style and manner more generally acceptable than the original. This had the praise of being the most correct of these works.—*Foster.*

Brossus, bruised or injured with blows, wounds, or other casualty.—*Cowel.*

Brothel [fr. *bordel*, Fr.], a lewd place, the

habitation of prostitutes. To keep such a house is an offence at Common Law, the prosecution of which by indictment is specially encouraged by 25 Geo. II. c. 36, s. 5, and the prosecution of which by summary proceedings before Justices of the Peace is allowed by the Criminal Law Amendment Act, 1885.

Brother-in-law, a wife's brother or a sister's husband. There is not any relationship, but only affinity between brothers-in-law.

Brougham's (Lord) Acts. The best known of them are, the Beer Act of 1830, 11 Geo. IV. and 1 Wm. IV. c. 64, the Judicial Committee Act of 1833, 3 & 4 Wm. IV. c. 41, the County Court Act of 1846, 9 & 10 Vict. c. 46, the Act for shortening the language of Acts of Parliament, 13 & 14 Vict. c. 21, and the Evidence Acts of 1845 and 1851, 8 & 9 Vict. c. 113, and 14 & 15 Vict. c. 99.

Brudhote. See BRIGBOTE.

Brudkop [fr. *brautkauf*, Low. Sax., purchase], betrothment.

Bruere [*erica*, Lat., heath], heath-ground.

Brueria [fr. *brær*, Sax., briar], thorns, briars, heath.—*Par. Ant.* 620.

Bruilletus, a small coppice or wood.

Bruillus [fr. *breil*, *breuil*, Fr., a thicket], a clump of trees in a park or forest.

Bruneta. See BURNETA.

Bruscia, a wood.—*Mon. Ang.* t. 1, fol. 773.

Brutum fulmen, an empty noise; an empty threat.

Bubbles [fr. *bobbel*, Dutch], projects started by dishonest individuals to cheat and rob the public. The South-Sea Project and the Railway Mania are examples. The 6 Geo. I. c. 18, punished such fraudulent undertakings; and so did 7 Geo. II. c. 8, commonly called the Bubble Act, or 'Barnard's Act,' repealed by 23 & 24 Vict. c. 38.

Bucinus, a military weapon for a footman.

Bucklarium, a buckler.

Buckstall, a toil to take deer.—4 *Inst.* 306.

Buckwheat, a French wheat, called in Essex *brank*, and in Worcestershire, *crap.*—15 *Car. II.* c. 5.

Buggery [fr. *buggerare*, Ital.], an abominable sin, amongst Christians not to be named. —3 *Inst.* 58; 12 *Rep.* 26; 24 & 25 *Vict.* c. 100, s. 61.

Building Acts. The acts commonly so called apply only to the metropolis, and in more modern times have been called the Metropolitan Building Acts. Their main object is to prevent fires. See Metropolitan Building Acts, 1855 and 1862, and Metropolitan Management and Building Act, 1878, and consult Woolrych's Metropolitan Buildings Acts, 3rd. ed., by Macnamara.

The old Building Act, *par excellence*, 14 Geo. III. c. 78, although otherwise partial and repealed, has two sections, 83 and 86, which are still in force and of universal application. Section 83 provides for the application of insurance money in reinstatement of insured buildings after damage by fire, and section 86 that no action shall lie against a person in whose house a fire accidentally begins.

Building (Benefit) Society. See BENEFIT BUILDING SOCIETIES.

Building lease, a lease of land for a long term of years, usually 99, at a rent called a ground rent, the lessee covenanting to erect certain edifices thereon according to specification, and to maintain the same, etc., during the term. At the end of the term, the land, with the edifices upon it, reverts in fee simple to the legal representative of the lessor. Such leases of settled estates are in many cases regulated by the Settled Land Act, 1882, or the Settled Estates Act, 1877, replacing the Settled Estates Act, 1856. See *Emden on Building Leases.*

Bull [fr. *bulla*, Lat., a stud or boss]; a brief or mandate of the Pope or Bishop of Rome, so called from the seal of lead or gold affixed to it, upon which was engraved on one side an image of St. Paul on the right of a cross, and that of St. Peter on the left, and on the other the Pope's name, and the year of his pontificate. To procure, publish, or put in use any of these is made treason by 13 Eliz. c. 2 and 7 Anne c. 21; and see 28 Hen. VIII. c. 16.

Bull (cant term of the Stock Exchange), one who speculates for a rise in the market.

Bull and **Boar.** By the custom of some places the parson was obliged to keep these animals for the use of the parishioners, in consideration of his having tithes of calves and pigs, etc.—1 *Roll. Abr.* 559.

Bullary, a bucket of brine.

Bull Baiting. See BAITING.

Bulletin [fr. *bulla*, Lat., a sealed despatch], an official notice of a public transaction or matter of public importance; an abridged edition of the *London Gazette.*

Bullio salis, as much salt as is made at one *wealing*, or boiling; a twelve gallon measure of salt.—*Mon. Ang.* t. 2.

Bullion [fr. *billon*, Fr., copper], uncoined gold and silver in the mass. Those metals are called so, either when smelted from the native ore, and not perfectly refined; or when they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree or fineness. As to the purchase of bullion for the Mint, see 33 & 34 Vict. c. 10, s. 9, which provides that the

Treasury may, from time to time, issue to the Master of the Mint such sums as may be necessary to enable him to purchase bullion, to provide supplies of coin for the public service. As to the weights used in sales of bullion, see Weights and Measures Acts, 1878, replacing 16 & 17 Vict. c. 29.

Bulter, or **Boulter**, the bran or refuse of meal after it is dressed; also the bag in which it is dressed.—51 *Hen. III.* Hence, *bulted*, or *boulted* bread, being the coarsest bread.

Bum-bailiff [fr. the notion of a humming, droning, or dunning noise; the term *bum* is applied to dunning a person for debt.—*Hall*], a person employed to dun one for a debt; the bailiff employed to arrest for debt.—*Wedgw.* See BOUND-BAILIFF.

Bungalow, a country-house in the East Indies.

Burden of proof [*onus probandi*, Lat.]. The most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative, according to the civil law maxims, *Ei incumbit probatio qui dicit, non qui negat*, and *Affirmanti non neganti incumbit probatio.* The burden of proof lies on the person who has to support his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognizant. See EVIDENCE.

Bureau [fr. *bujo*, It., dark], a large writing table; also the office of any functionary where public business is transacted.

Bureaucracy, government by departments, each under a chief; a word to describe the system, used in an invidious sense.

Burgage-holding, a tenure by which lands in royal boroughs in Scotland are held of the Sovereign. The service was watching and warding, and was done by the burgesses within the territory of the borough, whether expressed in the charter or not. See 31 & 32 Vict. c. 101.

Burgage-tenure, one of the three species of free socage holdings, is a tenure whereby houses and lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of Borough-English (*which see*).—*Litt.* s. 162. This tenure is obviously a fragment of Saxon freedom. As to the right of voting for members of parliament in respect of these interests, see 2 Wm. IV. c. 45; and see 2 *Bl. Com.* 82—3; *Glanv.* 1, 3, 7.

Burgbote, a contribution towards the building or repairing of castles or walls of a borough or city.—*Cowel; Fleta*, l. 1, c. 47.

Burgesses [fr. *burgeise*, O.E.; *burgeois*, O. Fr.; *burgensis*, Lat.], generally the inhabitants of a borough or walled town; sometimes restricted to the magistrates, etc., of corporate towns, and sometimes to the representatives of a borough in the Commons House of Parliament; in and for the purposes of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, those persons who by one year's residence in a borough and occupation of property and payment of rates are entitled to be 'enrolled,' and when enrolled, to elect the 'council,' by which a municipal corporation is capable of acting. See MUNICIPAL CORPORATION.

Burg-breche [*fidejussionis violatio*, Lat., a breach of pledge], a fine imposed on the community of a town, for a breach of the peace, etc.—*Leg. Canuti*, c. lv.

Burgessour, a burglar.—*Brit.*

Burgh, in Scotland equivalent to 'borough' in England.

Burgheristhe, or **Bugheriche**, a breach of the peace in a city, etc.—*Domesday.*

Burgh-mails, yearly payments to the Crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.—*Encyc. Lond.*

Burghware, a citizen or burgess.

Burglary [fr. *burg*, Sax., a house, and *larron*, a thief, fr. *latro*, Lat.], called by our ancient law *hamesecken.* A breaking and entering by night into or out of a dwelling-house with intent to commit a felony. There are four things to be considered in this definition: (1) The *time*; it must be by night, and not by day; and night in the perpetration of this offence, is to be considered as commencing at nine in the evening, and concluding at six in the morning (24 & 25 Vict. c. 96, s. 1). (2) The *place*; it must be a mansion-house, or dwelling-house, or some building connected therewith: as to this, see s. 53. (3) The *manner*; there must be both a breaking and an entry to complete it. But they need not be both done at once; for if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. (4) The *intent* must be felonious, either at Common Law or by Statute, as robbery, murder, rape, or any other felony, whether actually perpetrated or not. By 24 & 25 Vict. c. 96, s. 52, as amended by the Penal Servitude Act, 1864, burglary is punishable with penal servitude for life, or for any term not less than five years, or by imprisonment. See *Russell on Crimes.*

Burgmote, a court of a borough.—*Leg. Canuti*, c. xliv.

Burgomaster, a German mayor or Burgomeister.

Buri, husbandmen.—*Mon. Ang.*, t. 3, p. 183.

Burial, the act of interring the dead. The principal Burial Acts are the Cemeteries Clauses Act, 1847, 10 & 11 Vict. c. 47 (regulating Cemetery Companies); 15 & 16 Vict. c. 85 (Metropolitan Burial Boards); 17 & 18 Vict. c. 87 (borough burial boards); 20 & 21 Vict. c. 81; and the Burials Act, 1880, 43 & 44 Vict. c. 41 (allowing burial in churchyard without church rites). See *Chit. Stat.*, vol. i., tit. '*Burial*,' and vol. vi., tit. '*Statutes of* 1880.' The 36 & 37 Vict. c. 50, facilitates the acquisition of new sites for burial grounds.

Burial in some part of the parish churchyard without payment for breaking the soil is a common law right, and that right will be enforced by *mandamus*, but not burial in an iron coffin or vault, or even in any particular part of a churchyard, as the family vault for example, that being within the discretion of the incumbent. In order to acquire a perfect right to be buried in a particular vault or place, a faculty must be obtained from the ordinary, as in the case of a pew; or a man may prescribe that he is occupier of an ancient messuage in a parish, and ought to have separate burial in such a vault within the church, and such prescription implies that a faculty was originally obtained (8 B. & C. 293). The faculty, however, fails when the family cease to be parishioners.

A clergyman may be prosecuted in the Ecclesiastical Court for improperly refusing to bury a dissenter or other person, for by the 60th Canon 'no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard (convenient warning being given him before), in such manner and form as is prescribed in the Book of Common Prayer' (3 Phil. Ec. Cas. 264—806). A conspiracy to prevent a burial is indictable at common law, and so is the wilfully obstructing a clergyman in reading the Burial Service over the dead in the parish church, and by threats and menaces hindering the burial (7 Dowl. & Ryl. 461).

As to the enforcement on the occasion of burials, of the rules and ceremonies prescribed by the Book of Common Prayer, see PUBLIC WORSHIP REGULATION ACT.

A creditor cannot arrest or detain the body of the deceased debtor. See per Lord Ellenborough in *Jones* v. *Ashburnham*, 4 *East*, 445.

Funerals were exempt from tolls by 3 Geo. IV. c. 126, s. 32. As to the registration of deaths, see REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.

Burial Board. See BURIAL, and 34 & 35 Vict. c. 33. Local boards of health may be constituted burial boards.—Consult *Bazalgette and Humphrey's Local and Municipal Government.*

Burkism (from the name of its first perpetrator), the practice of killing persons for the purpose of selling their bodies for dissection.

Burlaw. See BYE-LAW.

Burnetta, or **Brunetta**, cloth made of dyed wool.—*Lyndewood.*

Burning in the hand. See BRANDING.

Burning of houses, outhouses, etc. See ARSON, and 24 & 25 Vict. c. 97, s. 1 *et seq.* As to setting fire to churches, mills, ships, etc., see 1 Vict. c. 89.

Burrochium, a burroch, dam, or small weir over a river, where traps are laid for the taking of fish.—*Cowel.*

Bursa, a purse.

Bursar [fr. *bursarius*, Lat.; whence *purse*, and *purser*, a ship's officer], a treasurer of a college.

Bursaria, the exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint-stock of the college.

Bursebolders. See HEADBOROUGH.

Busellas [fr. *bouts*, O. Fr., leathern vessels for holding wine], a bushel.

Bushel [fr. *busse*, Du., a box; *busken*, a little box], a dry measure containing eight gallons or four pecks.

Busones comitatus, the barons of a county. —*Blount*; 2 *Reeves*, c. viii. p. 2.

Bussa, a ship.—*Blount.*

Busta, Bustus, and **Buscus**, browse or brushwood.

Bustard [fr. *outarde*, Fr.], a large bird of game, usually found on downs and plains.—25 *Hen. VIII.* c. ii.

Buthscarle, mariners or seamen.—*Seld. Mare Claus.* 184.

Butler [fr. *bouteiller*, Fr., as if fr. *bouteille*, a bottle; or fr. *buttery*, *butt*, a barrel]. See BOTILER.

Butler's ordinance. A law for the heir to punish waste in the life of the ancestor. Though it be on record in the parliament book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an act of Parliament.—*Hale's Hist.*, p. 18.

Butlerage, an ancient hereditary duty belonging to the Crown, much older than the customs. It was a right of taking two tuns of wine from every ship importing into England twenty tuns or more, and by King Edward I. was exchanged into a duty of 2*s.* for every tun imported by merchant strangers. It was called *butlerage*, because paid to the king's butler; and also *prisage*, because it

was a *taking* or purveyance for wine to the king's use.—4 *Inst.* 30; 1 *Bl. Com.* 314.

Butt, 108 gallons.

Butticella, or **Butticellin**, a less measure.

Butts, the ends of short pieces of land in arable ridges of furrows. Also the place where archers meet with their bows and arrows to shoot at a mark.

Butty, a local term in the north for the associate or deputy of another; also of things used in common.

Buyer [fr. *bycgan, bohte*, A.S.; *bygge*, O.E.; to purchase for money], a purchaser. See CAVEAT EMPTOR.

Buying of Pleas. See MAINTENANCE.

Buzonis, the shaft of an arrow before it is fledged and feathered.

Bye and **Bee** [fr. *by*, Sax.], habitation, as *bying*, i.e., a dwelling-house.

Bye-bil-wuffa, a deed of mortgage or conditional sale. See KUL-KUBALA.—*Ind.*

By-laws, or **Bye-laws** [fr. *bilagines*, from *by*, Sax., *pagus, civitas*, and *lagen, lex*, Spelm.], the laws, regulations, and constitutions of corporations, for the government of their members. They may be made at courts-leet or courts-baron, by commoners or inhabitants in vills, etc., guilds, or fraternities of trade duly incorporated. They are binding, unless contrary to law, or unreasonable, and against the common benefit, and then they are void. There are nice distinctions drawn between by-laws made in *restraint* of a trade, and those to *regulate* it. If a by-law do not mention how the penalty for disobedience of it is to be recovered, debt, or *assumpsit* will lie, but if warranted by special custom, distress and sale of the party's goods may be made. No trading company is allowed to make by-laws which may affect the Crown, or the common profit of the people, under penalty of 40*l.* unless they be approved by the chancellor, treasurer, and chief justices, or the judges of assize.—19 *Hen. VII.* c. 7.

By the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, borough councils have express power to make such by-laws as to them shall seem meet 'for the good rule and government of the borough,' and for prevention and suppression of nuisances *not already punishable in a summary manner* by virtue of any act [see, e.g., the Public Health Act, 1875, ss. 47, 50, and 171] in force throughout the borough; and County Councils have similar powers within their counties under s. 16 of the Local Government Act, 1888.

Railway Companies have the power of making by-laws, by 8 Vict. c. 20. Like powers are contained in the Companies Clauses Act, 1845, s. 124; Commissioners Clauses Act, 1847, s. 96; Market and Fairs Clauses Act, 1847, s. 42; Harbours, Docks, and Piers Clauses Act, 1847, s. 83; Towns Improvements Clauses Act, 1847, ss. 126, 200; Towns Police Clauses Act, 1847, ss. 68, 71; the Public Health Act, 1875, and various other acts. See *Lumley on By-laws*; and as to confirmation of certain bye-laws, see Public Health Confirmation of Bye-laws Act, 1884, 47 Vict. c. 12.

By the Interpretation Act, 1889 (see that title) a statutory power to make bye-laws includes a power to rescind, revoke, amend, or vary them (s. 32), and may be exercised at any time after the passing, and before the commencement of the empowering Act, if the commencement be delayed (s. 37).

In Scotland those laws are called laws of *birlaw* or *burlaw*, which are made by neighbours elected by common consent in the birlaw courts, wherein cognizance is taken of complaints between neighbour and neighbour. And *birlaws*, according to Skene, are *leges rusticorum*, laws made by husbandmen, etc. concerning neighbourhood.

Bysax, the first month of the Bengal year, beginning on the 11th of April, and ending on the 11th of May.

C.

C, inscribed upon a ballot in the Roman Courts of Judicature, stood for *condemno.*—*Tay. C. L.* 192.

Cab. See 16 & 17 Vict. cc. 33 and 127, and 32 & 33 Vict. c. 115; *Charley on Cabs*, *Chit. Stat.*, vol. iii., tit. '*Hackney Carriages.*'

Cabal. A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word 'cabal'; hence the appellation.—*Hume*, ix. 69.

Cabalist, a factor or broker in French commerce.

Caballa, belonging to a horse.—*Domesday.*

Caballaria [fr. *caballus*, Lat., a mill-horse], pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service

Cabinet Council, a private and confidential assembly of the most considerable ministers of state (all being Privy Councillors), to concert measures for the administration of public affairs; first established by Charles I., and not expressly recognized by any law or statute.

Cable [fr. *cabl*, Welsh; *cabel*, Dut.], the great rope of a ship, to which the anchor is fastened. The proof and sale of chain cables and anchors is regulated by 27 & 28 Vict. c. 27, and 37 & 38 Vict. c. 51.

Cablish [fr. *cado*, Lat., to fall; *cablis*, O. Fr.], brushwood, or more properly windfall-wood, according to *Spelman*.

Cachepolus, or **Cacherellas**, an inferior bailiff, or catchpole.—*Jacob*.

Cachet, Lettres de, letters issued and signed by the kings of France, and counter-signed by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789.

Cadastu, an official statement of the quantity and value of realty made for purposes of taxation.—*Fr. Law*.

Cade, a cask containing, of herrings 500, but of sprats 1000.—*Book of Rates*, fol. 45.

Cadet [fr. *cadet*, Fr.; the younger son of a family; said to be fr. *capitetum*, little chief. —*Wedgw.*], one who is trained for the army by a course of military discipline at Woolwich, etc., previously to obtaining a commission in the army. Also a younger brother. —*Encyc. Lond.*

Cadi, a Turkish magistrate.

Cadit quæstio: there's an end to the argument.

Caduca, the lapse of a testamentary disposition.—*Sand. Just.*, 7th ed., 198, 228.

Caep gildum, restoring cattle or goods.

Caerleon, in Wales, an archbishopric which became subject to the Archbishop of Canterbury in the reign of Henry I.

Cæsarian operation [fr. *Cæsar*, or rather *Cæso*, the first of that name, who was cut out of his mother's womb], a surgical operation whereby the *fœtus* is taken from the mother, with a view to save the lives of both, or either of them. Consult *Tayl. Med. Jur.*, 2nd ed., II. 216 *et seq.*

If this operation be performed after the mother's death, the husband cannot be tenant by the courtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but if mother and child are saved, then the husband would be entitled after her death.

Cæterorum, a kind of administration granted after a limited administration for the rest of the estate.

Cagia, a cage or coop for birds.—*Rot. Claus.*; 38 *Hen. III.*

Cairns' Act, for enabling the Court of Chancery to award damages, 21 & 22 Vict. c. 27.

Calangium, and **Calangia**, a challenge, claim, or dispute.—*Mon. Angl.* tom. 2, fol. 252.

Calcetum and **Calcea** [fr. *calx*, Lat.; *chaus*, Fr., chalk], a causey, or common hard-way maintained and repaired with stones and rubbish.—*Kennet's Gloss.*

Calcutta, Bishop of, the metropolitan bishop of India.—3 & 4 *Wm. IV.* c. 85, s. 94; and see 53 Geo. III. c. 155, s. 49, 34 & 35 Vict. c. 62, and 37 Vict. c. 13.

Caledonia, the northern part of Britannia. For the precise signification of the term, consult *Smith's Dict. of Greek and Roman Geography*.

Calefagium, a right to take fuel yearly.—*Blount*.

Calendar [fr. *calendarium*, Lat.; fr. *calendæ*, the first day in the month in Roman reckoning], the order and series of months, together with the festivals and fasts, which make up the year. There are two modes of computing time—by the annual course of the sun, and by the periodical revolutions of the moon. The solar year consists of 365 days, 5 hours, 48′, 45″, 30‴; the lunar year of 354 days, 8 hours, 48′, 38″, 12‴. The Mahometans adopt the lunar year. The solar year, calculated by the ancient Egyptians, has undergone various corrections and denominations. The chief of these now in use are the three following: (1) The Julian year, so called because Julius Cæsar introduced into the Roman Empire the solar or Egyptian year, instead of the lunar year. The Russians and Greeks are the only nations that now use the Julian year. The common Julian year consists of 365 days, and the bissextile, which returns every four years, of 366 days. This computation is faulty, inasmuch as it allows 365 days and 6 entire hours, for the annual revolution of the sun, being an excess every year of 11′, 14″, 30‴, beyond the true time. This, in a course of ages, had amounted to several days, and began at length to derange the order of the seasons. Leo X. paid some attention to this, but Gregory XIII. caused a new calendar to be drawn up, which is called (2) the Gregorian year; and because the civil year had gained ten days, he ordered, by a bull published in 1581, that these days should be expunged, so that instead of the 5th of October, 1582, it should be reckoned the 15th. The Catholic states adopted this new calendar, but the Protestants and the rest of Europe adhered to the Julian, and hence the distinction between the old and new style, to which it is necessary to attend in all public acts and writings since 1582. The difference until 1699 was ten days, and eleven from 1700, twelve days must be reckoned during 1800, so that the 1st of January of the old style answers to the 13th of the new. (3) The Reformed Calendar

differs from the Gregorian, as to the method of calculating the time of Easter and other movable feasts. The Protestants of Germany, Holland, Denmark, and Switzerland, adopted this in 1700, Great Britain in 1752, Sweden in 1753, but since 1776, the Protestants of Germany, Switzerland, and Holland have adopted the Gregorian. In England the year used to commence on the 25th of March until 1753, when by the 24 Geo. II. c. 23, the beginning of the year was transferred to the 1st of January, and the 3rd of September, 1752, was reckoned the 14th of the same month in order to accommodate the English chronology to the new style.—28 *Geo. II.* c. 30; 6 *Rymer's Fœdera*, 119; *Koch's Europe, Introd.*; 2 *Hall. Lit. Hist.* 56, 329.

Calendar month, a period of time consisting of thirty days in April, June, September, and November; of thirty-one days in the remainder of the months, except February, which consists of twenty-eight days, unless in leap year, when the intercalary day is added, making twenty-nine days. The term 'month' in acts of parliament since 1850, means calendar month.—13 *Vict.* c. 21, s. 4. So too in the Rules of the Supreme Court.—R. S. C. 1883, Ord. LXIV., Rule 1.

Calendar of prisoners, a list of all the prisoners' names in the custody of the sheriff of each county, prepared before the arrival of the judges on their respective circuits. At the end of the assize, the clerk of assize makes out four written lists of all the prisoners, with separate columns, containing their crimes, verdicts, and sentences, leaving a blank column, which the judge fills up opposite to the names of the prisoners, by writing to be reprieved, or respited, or imprisoned, etc. These four calendars are signed by the judge and clerk of assize; then one is given to the sheriff, another to the gaoler, and the judge and the clerk of assize each keep another. If the sheriff afterward receives no special order from the judge, he executes the judgment of the law in the usual manner, agreeably to the directions in his calendar.—*Christian's note to* 4 *Bl. Com.* c. xxxii. 104.

Calends [fr. καλέω, Gk., to call], the first days of each month among the Romans.

Greek Calends, a term for a time never likely to arrive.

Call, the election of students to the degree of barrister-at-law, hence (2) The ceremony or epoch of election, and (3) The number of persons elected. See INNS OF COURT.

Call of the House, an imperative summons sent to every member of the House of Commons, on some particular occasion, when the sense of the whole House is deemed necessary. Members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they still be absent, and no excuse offered, they may be committed to the custody of the sergeant-at-arms.—*Lex. Parl.*

Calling the jury, successively drawing out of a box into which they have been previously put, the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve persons whose names are first called, and who appear, are sworn as the jury, unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward.

Calling the plaintiff. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call the plaintiff three times to 'come forth or he will lose his suit,' and if neither he, nor any person for him, appear, he is 'non-suited,' the jurors are discharged without giving a verdict, and the action is at an end; but in recent times the non-suit takes place without any 'calling.' See NONSUIT.

Calling upon a prisoner. When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him. To this, he is strictly only entitled to point out a defect of law in the indictment or otherwise.

Callis, the king's highway, according to old writers.—*Hunt*, l. 1; the author of a book of authority on sewers.

Calls, instalments by which the capital in a public company is gradually paid up. See Companies Clauses Act, 1845, s. 21; Companies Act, 1862, 25 & 26 Vict. c. 89, s. 70 *et seq.*; and 30 & 31 Vict. c. 131, ss. 24, 25.

Calpes, a gift to the head of a clan, as an acknowledgment for protection and maintenance.—*Scotch Law.*

Calumnia, the offence of a man who, in the language of Gaius, *intelligit non recte se agere sed vexandi adversarii gratia actionem instituit.*—*Sand. Just.*, ed. 7, 259, 499.

Calumniators, false accusers.

Camalodunum, Maldon in Essex.

Cambist [fr. *cambium*, Lat.], a person skilled in cambistry or exchanges; a trader or dealer in promissory notes and bills of exchange. Technical among merchants and bankers.

Cambridge. See UNIVERSITY.

Camera [fr. καμάρα, Gk.], the judge's chamber in Serjeant's Inn.—*Ken. Glos.*

The judge's private room behind the court.

Following the practice of the Ecclesiastical Courts before the transfer of their jurisdiction to the Divorce Court, the latter court, in pursuance of s. 22 of the Matrimonial Causes Act, 1857, hears suits for nullity of marriage on physical grounds, and some suits for judicial separation in private, or *in camerâ*, as it is called; but suits for dissolution of marriage cannot be so heard, even by consent of the parties.

Cameralistics, the science of finance or public revenue, comprehending the means of raising and disposing of it.

Camera stellata, the Star Chamber. Its authority was enlarged and confirmed by *Rot. Parl.* 3 Hen. VII. n. 17, and abolished in the reign of Charles I., a little before the commencement of the civil wars.—*Hume*, iv. 96.

Camisia, a garment belonging to priests, called the *Alb.*—*Pet. Blesensis.*

Camoca, a garment made of silk.—*Mon. Angl.* tom. 3, p. 81.

Campaltum, a corn-field.—*Pet. in Parl.* 30, *Ed. I.*

Campana bajula, a small hand-bell, used in the ceremonies of the Roman Church, and retained amongst the Protestants by sextons, parish clerks, and criers.—*Camb. ap. Wharton Angl. Sacr.* par. 2, p. 637.

Campartum, a part of a large field or ground, which would otherwise be in gross or common.—*Prinne, His. Coll.*, Vol. III. p. 89.

Campbell's (Lord) Acts for amending the practice in prosecutions for libel, 9 & 10 Vict. c. 93; also 6 & 7 Vict. c. 96, providing for compensation to relatives in the case of a person having been killed through negligence; also 20 & 21 Vict. c. 83, for preventing the sale of obscene books, etc.

Campfight, the trial of a cause by combat of two champions in the field. If it were a crime deserving death, the campfight was for life or death; if the offence deserved only imprisonment, the campfight was accomplished when one combatant had subdued the other, so as either to make him yield or take him a prisoner. The accused might choose another to fight in his stead, but the accuser was obliged to fight in his own person. See BATTLE. The combatants were armed with similar weapons.—3 *Inst.* 221; *Verstegan's Rest. of decayed Intel.* 64.

Campus maii, an anniversary assembly of our ancestors, held on May-day, when they confederated for the general defence of the kingdom.—*Leges Edw. Conf.* c. 35.

Can, clearance, averment.—*Anc. Hist. Eng.*

Cana, a rod or distance in the measure of ground.

Canal. As to breaking down bank, dam, wall, etc., of, see 24 & 25 Vict. c. 97, s. 30; as to setting fire to buildings belonging to, see s. 4; as to stealing vessels from, see 24 & 25 Vict. c. 96, s. 63.

By 8 & 9 Vict. c. 28, canal companies may vary their tolls, but must charge the public equally; and by 8 & 9 Vict. c. 42, they may act as carriers. The Railway and Canal Traffic Act, 1854, as amended by the Regulation of Railways Act, 1873, provides for the interchange of traffic between canal and railway companies, and for the due maintenance of canals by railway companies owning them, and the Railway and Canal Traffic Act, 1888, 51 & 52 Vict. c. 25, further amends the law in the same direction by giving 'the Railway and Canal Commission' extensive control over the management of canals, more especially if owned by railway companies, and provides for a new classification and schedule of rates to be charged for canal traffic.

Canal Boats. The registration and inspection of canal boats used as dwellings, and the education of children living therein, is provided by the Canal Boats Act, 1877, 40 & 41 Vict. c. 60, made more stringent by the Canal Boats Act, 1884, 47 & 48 Vict. c. 75.

Cancellaria Curia, the ancient denomination of the Court of Chancery.

Cancellarii Anglicæ dignitas est, ut secundus à rege in regno habetur. 4 Inst. 78.—(The dignity of the Chancellor of England is, that he is deemed the second from the sovereign in the kingdom.)

Cancellation, avoidance or nullification, also any manner of obliteration and defacement, as of a bill of exchange in the manner prescribed by s. 63 of the Bills of Exchange Act, 1882, or of an adhesive stamp in the manner prescribed by s. 8 of the Stamp Act, 1891.

Cancelli (*lattice work*), the rails or balusters inclosing the bar of a court of justice or the communion-table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

Candidate [fr. *candidatus*, Lat., clothed in white], a competitor, one who solicits or proposes himself for a place or office. The name is borrowed from the *Toga Candida* in which competitors at Rome were habited. In the Corrupt Practices Acts the expression has a specially extensive meaning. See Corrupt and Illegal Practices Prevention Act, 1883, s. 63.

Candle, sale by. See INCH OF CANDLE.

Candlemas-day, a festival appointed by the church to be observed on the second day of February in every year, in honour of the purification of the Virgin Mary; so called

from the processions with lighted candles, and consecration of candles on that day for the service of the ensuing year. In some parts of the country agricultural tenancies date from this day.

Canes opertiæ, dogs with whole feet, not cawed, i.e., not having the fore-claws cut off, in order to disable them from running at deer.

Canestellus [dim. of *canistrum*, Lat.], a basket.

Canfara, a trial by hot iron.

Canipulus, a short sword.—*Blount.*

Canon [fr. κανων, Gk., a rule], a law or ordinance of the church; also a residentiary member of a cathedral chapter.—3 & 4 *Vict.* c. 113. As to the resignation of canons, see 35 & 36 Vict. c. 8.

Canon Law. When Christian communities formed themselves into congregations (ἐκκλησίαι), certain resolutions were agreed upon for their government; these were termed rules (κανόνες, forma, disciplina); the phrases *canonica sanctio*, *lex canonica*, and *canonum jura*, were not introduced until the ninth century, nor the phrase *jus canonicum* until the canon law began in the twelfth century to be treated as a science. The canon law, properly so called, denotes the ecclesiastical law, sanctioned by the Church of Rome. It borrows from the Roman law many of its principles and rules of proceeding, though not servilely, nor without such variations as the independence of its tribunals and the different nature of its authorities might be expected to produce.—2 *Hall. Lit. Hist.* pt. 2, c. iv., s. 3, p. 173.

The canons made in England in 1603, and revised in 1865, are binding on the clergy only, some of them being very archaic, as canon 72, by which it is unlawful for any minister to attempt to cast out devils, except with the license of the bishop of the diocese. The canon law is founded principally upon the civil law, and so interwoven with it in its many branches, that there is no understanding the canon law rightly, without being very well versed in the civil law; wherefore its knowledge is absolutely necessary for the dispatch of all causes of ecclesiastical cognizance. And the civil law not only serves to explain the canon law, but by the practice of ecclesiastical courts it is allowed to come in aid of and to support the canon law in cases which are there omitted.

Canonical, agreeable to the canons of the church.

Canonical obedience, that duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop.

Canonist, a professor of ecclesiastical law.

Canons of inheritance. See INHERITANCE.

Cantel, or **Cantle** [fr. *chantel*, Fr.], a lump, or that which is added above measure; also a piece of anything, as '*cantel of bread*,' or the like.—*Blount.*

Canterbury, Archbishop of, the Primate of All England; the Chief Ecclesiastical Dignitary in the Church: his customary privilege is to crown the Kings and Queens of England; while the Archbishop of York has the privilege to crown the Queen-Consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25 Hen. VIII. c. 21, the power of granting dispensations in any case not contrary to the Holy Scriptures and the law of God, where the Pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time; to hold two livings (which must be confirmed under the Great Seal), and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities; but although he can confer all the degrees which are taken in the universities, yet the graduates of the two universities, by various acts of parliament, and other regulations, are entitled to many privileges, which are not extended to what is called a *Lambeth* degree.—1 *Bl. Com.* 381; *Phill. Eccl. Law*, 32, 37, 792, 821, 1233. The power of conferring medical degrees appears to be superseded by 21 & 22 Vict. c. 90, sch. A 10, called 'The Medical Act.' See ARCHBISHOP.

Cantred, or **Kantress** [fr. *cant*, or *cantre*, Brit., a hundred, and *tre*, a town or village], a hundred Welsh villages.—*Mon. Aug.* p. l. f. 319; 28 *Hen. VIII.* c. 3.

Cap of maintenance, one of the regalia or ornaments of State belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England.—*Encyc. Lond.*

Capax doli, capable of committing crime.

Cape, a judicial writ touching a plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandment; the *cape ad valentiam* was a species of grand cape; and *cape parvum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only.—*Termes de la Ley*; 3 *Step. Com.*, 7th ed., 606, n.

Capella, an oratory, or depending place of divine worship; also a chest, cabinet, or other depository of precious things, especially

of religious relics.—*Ken. Paroch. Antiq.* 580.

Capellus, a cap, bonnet, helmet, or other covering for the head.

Capias (*that you take*). The writ of *capias* (which was a writ directing the sheriff to take the body of the defendant), as a means of commencing an action at Common Law, was altogether abolished, and a new writ, called a 'capias on mesne process,' or 'bailable process,' was introduced by 1 & 2 Vict. c. 110, s. 3, which limited the application of the writ to cases in which the cause of action amounts to 20*l.* or upwards, and the debtor is about to quit England, unless forthwith apprehended. By 32 & 33 Vict. c. 62, s. 6, it is enacted, that after the commencement of that act, a person shall not be arrested upon mesne process, in any action. Nevertheless, where a plaintiff has good cause of action against the defendant to the amount of 50*l.* or upwards, and the defendant is about to quit England, and the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, a judge may order the defendant to be arrested, unless, or until, security be found. See MESNE PROCESS.

A capias is the process of an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute.—4 *Step. Com.*, 9th ed., 384.

Capias ad audiendum judicium (*that you take to hear judgment*). This writ is awarded and issued, in case the defendant be found guilty of a misdemeanour (the trial of which may, and does usually, happen in his absence, after he has once appeared), to bring him up to the Court to receive sentence, and, if he abscond, he may be prosecuted even to outlawry.—4 *Bl. Com.* 375.

Capias ad respondendum (*that you take to answer*). A process issued in cases of injury accompanied with force, or otherwise, against the defendant's person, when he neglected to appear upon the former process of attachment-ment, or had no substance whereby to be attached, subjecting his person to imprisonment.—3 *Bl. Com.* 281. See 48 Geo. III. c. 58.

Capias ad satisfaciendum (*that you take to satisfy*); called in practice a *ca. sa.* A writ of execution of the highest nature, inasmuch as it deprives a person of liberty, till the satisfaction awarded be made. The writ is addressed to the sheriff, commanding him to take the body of the defendant, and have him at Westminster on a day therein named, or immediately after the execution of the writ, to make the plaintiff satisfaction for his demand, or remain in custody till he does. The general rule is that any person may be arrested under this writ who is not privileged from being held to bail under a *capias ad respondendum.* By 7 & 8 Vict. c. 96, s. 57, this kind of execution was abolished 'in any action for the recovery of any debt wherein the sum recovered shall not exceed 20*l.*, exclusive of the costs recovered by such judgment,' and by the Debtors Act, 1869, 32 & 33 Vict. c. 62, in any action whatever, unless the defendant *could*, but *would not* pay. See IMPRISONMENT FOR DEBT.

Capias in withernam (*that you take by way of reprisals*). If the goods before an action of replevin have been concealed, so that the sheriff cannot replevy them, then, upon plaint being levied in the County Court by the plaintiff, the plaintiff may issue this writ directing the sheriff to take goods or cattle of the defendant, to the value of those taken by him, and deliver them to the plaintiff, who gives a bond with sureties, conditioned to prosecute his suit and to return the goods, etc., so to be delivered to him, if a return of them should be afterwards adjudged. Goods taken *in withernam* cannot be replevied till the original distress is forthcoming.

Also, after verdict and judgment for defendant in replevin, and the usual writ of execution *de retorno habendo* has been sued out, to which the sheriff has returned that the goods, etc., are concealed or eloigned, i.e., conveyed to places unknown to him, so that he cannot execute the writ, the defendant may then sue out a *capias in withernam*, requiring the sheriff to take other goods, etc., of the plaintiff to the value of the goods, etc., eloigned, and deliver them to the defendant, to be kept by him until the plaintiff deliver to him the goods, etc., originally replevied. See REPLEVIN.

Capias pro fine, or **Misericordia** (*that you take for the fine* or *in mercy*). Formerly if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but if the verdict was for the plaintiff, then in all actions *vi et armis*, or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; in all other cases, the defendant was adjudged to be amerced. The insertion of the *misericordia*, or of the *capiatur* in the judgment, is now unnecessary.—See 1 *Ch. Arch.*

Capias utlegatum (*that you take the outlaw*). This writ is either general, against the person only; or special, against the person, lands, and goods; but outlawry is abolished in civil proceedings. See OUTLAWRY.

Capiatur, *judgment quod.* See CAPIAS PRO FINE, or MISERICORDIA.

Capita [M. Lat.], abuttals or boundaries.

Capita (*heads*). Distribution of personalty *per capita* (professedly borrowed from the civilians, and enacted in the Statutes of Distributions) happens when all the claimants claim in their own right, in equal degree of kindred, and not *jure representationis* (*per stirpes*), in the right of another person, as if the next of kin be the intestate's three children, A., B., and C.; and here the intestate's personalty is divided into three equal portions, and distributed *per capita*, one to each. So succession *per capita* is where the claimants are next in degree to the ancestor, in their own right, and not by right of representation.

Capital [fr. *capitalis; caput*, Lat.], in political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production; but, in commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker, or trader adventures in any undertaking, or which he contributes to the common stock of a partnership. Also the fund of a trading company or corporation, in which sense the word *stock* is generally added to it.—*McCull. Com. Dict.*

Capital felonies, those crimes upon conviction of which the offender is condemned to be hanged. The crimes now punishable with death are high treason and murder. Since 24 & 25 Vict. cc. 96, 97, 98, and 100, numerous offences, formerly capital, have ceased to be so.

Capitale, a thing which is stolen, or the value of it.—*Blount.*

Capitale vivens, live cattle.—*Ibid.*

Capitation, a tax raised on each person in consideration of his labour, industry, office, rank, etc.

Capitation Fee. A fee for each person dealt with by the person who receives it; as where a schoolmaster, in addition to his salary, or instead of it, is paid one pound per annum for each boy in the school.

Capite, tenure in, lands held by tenants immediately from the king. It was the most honourable tenure, and was of two kinds, either *ut de honore*, where the land was held of the king, as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held in right of the Crown itself. When these tenants *in capite* granted portions of their lands to inferior persons, they were called *mesne* (middle) lords or barons, with regard to such inferior tenants, who were styled tenants *paravail*, the lowest tenants, because they were supposed to make avail or profit of the lands. This tenure is abolished, so that tenures now created by the Crown are in common socage.—12 *Car. II.* c. 24.

Capitilitium, poll-money.

Capititium, a covering for the head.—1 *Hen. IV.*

Capitula itineris, articles of inquiry.—2 *Reeves*, c. viii. p. 4.

Capitula ruralia, assemblies or chapters, held by rural deans, and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards, once a month, and subsequently once a quarter.—*Cowel.*

Capitulary, a code of laws.

Capitulation [fr. *capitulo*, Lat., to treat upon terms; fr. *capitulum*, a little head or division], the treaty which determines the conditions under which a place besieged is abandoned to the commanding officer of the besieging army; (2) an agreement by which the prince and the people, or those who have the right of the people, regulate the manner of government.

Capitulum est clericorum congregatio sub uno decano in ecclesiâ cathedrali. Co. Litt. 98.—(A chapter is a congregation of clergy under one dean in a cathedral church.)

Capituli agri, head-lands; lands lying at the head or upper end of furrows, etc.—*Ken. Par. Ant.* 137.

Captator, a person who obtains a gift or legacy through artifice.

Caption, that part of a legal instrument as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed.—*Arch. Crim. Plead.*, tit. '*Caption.*'

Captives, prisoners. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid.—2 *Bl. Com.* 402.

Capture, the arrest or seizure of a person or thing, particularly applied to the seizure of ships by an enemy in time of war. On 16th April, 1856, a treaty or declaration was signed at Paris, between the powers of Great Britain, Austria, France, Russia, Sardinia, and Turkey, by which privateering is abolished, so far as those powers are concerned. See LETTERS OF MARQUE.

Caputagium, head or poll-money.

Caput anni, the first day of the year.

Caput baroniæ, the castle or chief seat of a baron.

Caput jejunii, the beginning of the Lent Fast, i.e., Ash Wednesday.

Caput loci, the head or upper part of a place.

Caput lupinum, a wolf's head. An out-

lawed felon was said to be *caput lupinum*, and might be knocked on the head, like a wolf.

Caput mortuum, dead; obsolete.

Car, and **Char** [fr. *caer*, Brit., city], names of places beginning with these words signify city, as Carlisle, Cardiff, etc.

Carat, a weight equal to three and one-sixth grains.

Carcan, a pillory.

Carcanum, a prison.—*Leg. Canut. Reg.*

Carcatus, loaded, a ship freighted.

Carcel-age, prison-fees.

Carcer ad homines custodiendos non ad puniendos, dari debet. Co. Litt. 620.—(A prison ought to be given for the custody, not the punishment of persons.)

Carcer non supplicii causâ sed custodiæ constitutus.—(A prison is ordained not for the sake of punishment, but of ward.)—*Lofft.* 119.

Cards. To keep a common house for card-playing is unlawful.—17 & 18 *Vict.* c. 38; and see GAMING. Cheating at cards is punishable by 8 & 9 Vict. c. 100, s. 17.

Carecta and **Carectata**, a cart and cart-load.

Caretorius, or **Carectarius**, a carter.—*Blount.*

Caretta, a carriage, cart, or wain-load.

Cargo [fr. *cargo*, Sp., the load of a ship; *charge*, Fr.], the lading of a ship, the merchandise or wares contained and conveyed in a ship.

Caristia, dearth, scarcity, dearness.—*Cowel.*

Caritas, or **Karite**, a grace-cup, an extraordinary allowance of wine or liquor.

Cark, a quantity of wool, whereof thirty make a sarplar.—27 *Hen. VI.* c. 2.

Carle. See KARLE.

Carnal knowledge. See RAPE.

Carno, an immunity or privilege.—*Cowel.*

Caroome, a license by the Lord Mayor of London to keep a cart.

Carpemeals, a coarse cloth.—7 *Jac. I.* c. 16.

Carrels, closets, or apartments for privacy, or retirement.

Carricle, or **Carracle**, a ship of great burden.

Carrier, in its general sense, a person who undertakes to transport the goods of other persons from one place to another for hire. It is not, however, every person who undertakes to carry goods for hire that is deemed a common carrier.

To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hâc vice.*

The two obligations of a common carrier are (1) to carry for everybody, and (2) to answer for all things carried as insurers.

The second obligation, that of insurers, is restricted by the 'Carriers' Act,' 11 Geo. IV. and 1 Wm. IV. c. 68, which protects carriers from liability in case of the loss of certain specified articles, e.g., jewellery, pictures, plate, and silks, exceeding the value of *ten* pounds (excepting loss by the felony of the carrier's servants or his own personal default), unless the party delivering the goods declare the value, and offer to pay, if required, an extra charge for carriage.

Cart-bote. See BOTE.

Carte blanche, a white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to superscribe what conditions he pleases. Applied generally in the sense of unlimited authority being granted.

Cartel [fr. *cartella*, It., pasteboard], a piece of pasteboard with some inscription on it, hung up in some place, and to be removed.—*Flor.* Hence a written challenge openly hung up; afterwards any written challenge. See CHARTEL.

Cartel-ship, a vessel commissioned in time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another; for this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for signals.—*Encyc. Lond.*

Cartulary [fr. *carta*, Lat., paper], a place where papers or records are kept.

Caruca [fr. *carr*, old Gallic], a plough. See AVERIA CARUCÆ.

Caurcage, a tax imposed on every plough for the public service.

Carucatarius, he that held lands in *carvage*, or plough-tenure.—*Paroch. Antiq.* 354.

Carucate [fr. *carucata terræ*], **Carvage**, or **Carve of land**, a plough-land of 100 acres, or, according to Skene, as much land as may be tilled in a year and a day by one plough.—*Ken. Glos.* This quantity varies in different counties from 60 to 120 acres.

Case. The action on the case lay where a party sues for *damages*, for any wrong or cause of complaint to which *covenant* or *trespass* will not apply. This action originated in the power given by the Statute of Westminster 2, to the clerks of Chancery, to frame new writs *in consimili casu* with writs already known. Under this power, they constructed many writs for different injuries, which were considered as *in consimili casu* with, that is, to bear a certain analogy to, a *trespass.* The new writs invented for the cases supposed to

bear such analogy, received, accordingly, the appellation of writs of *trespass on the case* (*brevia 'de transgressione super casum'*), as being founded on the particular circumstances of the case thus requiring a remedy, and to distinguish them from the old writ of *trespass*; and the injuries themselves, which are the subjects of such writs, were not called *trespasses*, but had the general name of *torts*, *wrongs*, or *grievances*.—*Steph. Plead.*, 7th ed., 12.

As the technical mode of pleading at Common Law is now abolished by the Judicature Acts, 1873 & 1875, the term 'action on the case' will only continue to exist as a convenient mode of expression, and will cease to be a term of art.

For different kinds of action on the case, see MALICIOUS PROSECUTION, NEGLIGENCE, DECEIT, LIBEL, SLANDER, SEDUCTION, LIGHTS, WAYS, SEDUCING TO LEAVE SERVICE.

Case for the opinion of Courts of Law. Prior to the passing of the 16 & 17 Vict. c. 86, s. 61, the Court of Chancery used to direct such cases for the opinion of a Court of Law; but that Act gave the Court of Chancery the power of deciding questions of law.

Case stated, a narrative (agreed upon by both parties to an action, or drawn up by an impartial person agreed upon by them or settled by the Court or a judge) setting forth the facts and points in dispute, with a view to a prompt decision. By R. S. C. 1883, Ord. XXXIV., the parties after writ may concur in stating questions of law in a special case, or if it appear to the Court or a Judge from the pleadings or otherwise that there is a question of law which it would be convenient to have decided in that manner, they or he may order a special case to be stated. See SPECIAL CASES.

The appeal from the County Courts might be in the form of a case stated until 1886, but this procedure was abolished by the Rules of that year.

As to cases stated by justices of the peace, see 20 & 21 Vict. c. 43, 35 & 36 Vict. c. 26, and 42 & 43 Vict. c. 49, s. 33.

Cash [fr. *caisse*, Fr., a chest], money, properly ready money.

Cashier, a person entrusted with the monetary interest of a public company, usually under the order of directors; also to deprive of office.

Cashlite, a mulct.

Cassation [from *casser*, Fr., to quash], a making null or void of any unjust or illegal act or decision; also a decision in the last resort.—*Fr. Law.*

Cassatum and **Cassata,** a house, with land sufficient to maintain one family.

Cassetur breve (*that the writ be quashed*). When the defendant pleaded sufficient matter in abatement and the plaintiff could not deny it, he could either obtain leave to amend his declaration, he might at once enter on the roll a *cassetur breve*, or judgment upon his prayer that his writ might be quashed, to the intent that he might sue out a better.—2 *Chit. Arch. Prac.* Pleas in abatement are, however, now abolished by the Judicature Act, 1875. See ABATEMENT.

Cassidile, a little sack, purse, or pocket.

Cassock, or **Cassula** [fr. *casag*, Gael., a long coat], a garment belonging to a priest.

Cast, defeated at law, condemned in costs, or damages.

Castel, or **Castle** [fr. *castellum*, dim, of *castrum*, Lat.], a fortress in a town; a principal mansion of a nobleman.—1 *Inst.* 31.

Castellain, the lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the Crown mansions; an officer of the forest.—*Bract. Manw.*

Castellarium, the precinct or jurisdiction of a castle.

Castellarum operatio, castle-work or service and labour done by inferior tenants for the building and upholding of castles of defence; towards which some gave their personal assistance, and others paid their contributions. See TRINODA NECESSITAS. *Castleward* was the service of guarding or watching at such castle.

Caster and **Chester** [fr. *castrum*, Lat.]. The places ending with either of these words were the sites of the castles built by the Romans.

Castigatory, a certain engine of correction, otherwise called the tre-bucket, *tumbrel tymborella*, cucking-stool, scolding-school, ducking-stool, *goginstole*, and *cokestole*, corrupted from choaking-stool. It was a punishment provided for scolding women, wherein they were plunged or soused over head in the water.

It was also called *Cathedra Stercoralis*, and by the Saxons *scealfing stole*, and anciently inflicted on brewers and bakers transgressing the laws, who were ducked *in stercore* (in stinking water).—*Domesday Book.*

Casting an essoin. See ESSOIN.

Casting vote, the vote given by the chairman or president of a deliberative assembly (who is usually not entitled to vote in the first instance), when the suffrages of the meeting are equal.

The chairman of vestries has a casting vote (58 Geo. III. c. 69, s. 2), and so has the mayor or other chairman at a meeting of a Town Council (Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 22, and Sched. 11,

Rule 11), and the chairman of local boards. By the Companies Clauses Act, 1845, the chairman of directors has a casting vote (s. 92), as has the chairman of a committee (s. 96), and the chairman of a general meeting (s. 76).

Castle-ward, an imposition laid upon persons living within a certain distance of a castle towards the maintenance of those who watch and ward the same.—*Magna Charta; 32 Hen. VIII.* c. 48.

Casual ejector, the fictitious *Richard Roe* in the mixed action of ejectment, before the fiction was abolished by the C. L. P. Act, 1852. See EJECTMENT.

Casual Pauper. Any destitute wayfarer or wanderer applying for, or receiving relief. See Pauper Inmates Discharge and Regulation Act, 1871, 34 & 35 Vict. c. 108, and Casual Poor Act, 1882, 45 & 46 Vict. c. 36.

Casual poor, those who are not settled in a parish.

Casualty of wards, the mails and duties due to the superior in ward-holdings.

Casu consimili, a writ of entry, granted where tenant by the courtesy, or tenant for life, alienated in fee, or in tail, or for another's life, and was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime.—*Termes de la Ley*. Abolished.

Casu proviso, a writ of entry, given by the Stat. of Gloucester, c. 7, where a tenant in dower alienated in fee, or for life, etc., and it lay for him in reversion against the alienee. —*F. N. B.* 207. Abolished.

Casus belli, an occurrence giving rise to, or justifying war.

Casus fœderis, a case stipulated by treaty, or which comes within the terms of a compact.

Casus omissus, a point unprovided for: if by statute the omission can be remedied by another statute only. See *Maxwell on Statutes*, 2nd ed., p. 17.

Casus omissus et oblivioni datus dispositioni communis juris relinquitur.—(A case omitted and consigned to oblivion is left to the disposal of the common law.)—5 *Rep.* 38.

Cat. A cat is not the subject of larceny at Common Law: for the punishment for stealing a cat see 24 & 25 Vict. c. 96, s. 21; for maliciously killing or wounding, see 24 & 25 Vict. c. 97, s. 41; and for painful experiment on, see 39 & 40 Vict. c. 77, s. 5.

The master of a ship freighted with goods, which are the subject of depredation by rats, is bound to have cats on board, or he cannot charge the insurer. (2) The instrument with which criminals are flogged in England. [See WHIPPING.] It consists of nine lashes of whipcord tied on to a wooden handle.

Catalla, chattels. The word among the Normans primarily signified only beasts of husbandry, or as they are still called 'cattle'; but in a secondary sense the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud.

Catalla justé possessa amitti non possunt. Jenk. Cent. 28.—(Chattels justly possessed cannot be lost.)

Catalla reputantur inter minima in lege. Ibid. 52.—(Chattels are considered in law among the least things.)

Catallis captis nomine districtionis, an obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.—*Old Nat. Bre.* 66.

Catallis reddendis, an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand redelivered at the day.—*Reg. Orig.* 39.

Catals, goods and chattels. See CATALLA.

Catapulta, a warlike engine to shoot darts; a crossbow.

Catascopus, an archdeacon.—*Du Cange.*

Catching bargain, a purchase from an expectant heir, for an inadequate consideration. See EXPECTANT HEIR.

Catchland. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of pre-occupation, enjoys them for that year.—*Cowel.*

Catchpole, a sheriff's officer or bailiff, so called.

Categorical, direct; unqualified; unconditional.

Category [fr. κατηγορία, Gk.], a series or order of all the predicates or attributes contained under a genus.

Cathedral [fr. καθέδρα, Gk., a seat], the church of the bishop and head of the diocese, in which is his seat of dignity. The Cathedral Acts are 3 & 4 Vict. c. 113, 4 & 5 Vict. c. 39, 6 & 7 Vict. c. 77, 16 & 17 Vict. c. 35, 27 & 28 Vict. c. 70, and 36 & 37 Vict. c. 39; and as to Wales, see 6 & 7 Vict. c. 77.

Our cathedrals and collegiate churches have been divided into four classess:—1st, consisting of thirteen, being the cathedrals of the old foundation, or *Ecclesiæ Cathedrales Canonicorum Secularium*: 2nd, consisting of eight conventual cathedrals, constituted with deans and chapters by Hen. VIII.; 3rd, containing the five cathedrals founded, together with new bishoprics, by Hen. VIII.; 4th, the new cathedrals of Ripon and Man-

chester; and (under 38 & 39 Vict. c. 34, s. 4) St. Albans.

Cathedral preferments, all deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop. Consult *Stephens on the Clergy*.

Cathedratic, a sum of 2*s.* paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*.—*Burn's Dict.*

Catholic [fr. καθολικός, Gk.], universal, general. The rise of heretics induced the primitive Italian church to assume to itself the appellation of Catholic, being a characteristic to distinguish itself from all private or particular sects. The Romish church, assuming this claim, distinguishes itself by the name of Catholic, in opposition to all those who have separated from her communion in the eucharist, and whom she considers as heretics and schismatics, and herself only as the true and Christian church. See ROMAN CATHOLIC.—*Encyc. Lond.*

Catholic Emancipation Act, 10 Geo. IV. c. 7. See ROMAN CATHOLIC.

Cattle [derived by Skinner, Menage, and Spelman, fr. *capitalia, quæ ad caput pertinent*, personal goods; in which sense *chattels* is yet used. Mandeville uses *Catele* for price], beasts of pasture, neither wild nor domestic. As for injury to cattle by dogs, see 28 & 29 Vict. c. 60. As to larceny of cattle, see 24 & 25 Vict. c. 96, s. 10, and as to killing cattle, etc., with intent to steal the carcase, skin, or any part of the animal killed, see s. 11. As to the prevention of cattle plague, pleuro-pneumonia, and foot and mouth disease, by slaughtering or preventing the movement of infected animals and restricting the importation of foreign cattle, see Contagious Diseases (Animals) Act, 1878, 41 & 42 Vict. c. 74, repealing and replacing an act of 1869 having the same title, and itself repealing eight prior acts in *pari materiâ*, from 38 Geo. III. c. 65, to 30 & 31 Vict. c. 125. The Act of 1878, like the Acts which precede it, and in even greater degree, depends for its effectual working upon orders to be made by the Privy Council from time to time.

The weighing of cattle at markets and fairs is provided for by the Markets and Fairs (Weighing of Cattle) Acts of 1887 and 1891, 50 & 51 Vict. c. 27 and 54 & 55 Vict. c. 70.

Cattle-gate, common for one beast.

Catzurus, a hunting-horse.

Cauda terræ, a land's end, or the bottom of a ridge in arable land.

Caulceis, ways pitched with flint or other stones. See CALCETUM.

Caurcines. Italian money-lenders in England, about the year 1235, who called themselves the Pope's merchants.

Causa causans, the immediate cause; the last link in the chain of causation.

Causa matrimonii prælocuti, a writ which lay where a woman gave lands to a man in fee simple, etc., to the intent he should marry her, and he refused to do so in any reasonable time, being thereunto required.—*Reg. Orig.* 66. Abolished by 3 & 4 Wm. IV. c. 27.

Causâ mortis (*in prospect of death*). See DONATIO MORTIS CAUSA.

Causa proxima, the same as Causa causans.

Causa proxima, non remota spectatur. Bac. Max. R. I.—(The immediate, not the remote cause, is to be regarded.)

Causa vaga et incerta non est causa rationabilis. 5 Co. 57.—(A vague and uncertain cause is not a reasonable cause.)

Causam nobis significes quare, a writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee; on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty.

Cause, a suit or action; motive or reason; that which produces an effect.

Cause of action, a right to sue. As to joinder of causes of action, see that title.

Cause-list, a printed roll of actions to be tried in the order of their entry, with the names of the solicitor for each litigant.

Causea [fr. *chaussée*, Fr., a paved road], a causeway.

Causes célèbres, a work containing reports of the decisions of interest and importance in French Courts in the 17th & 18th centuries. The first series, in 22 vols., is by Gayot de Pitival; the second, called the *Nouvelles Causes Célèbres*, in 15, by Des Essarts. Howell's "State Trials" in England are now in the course of being brought up to date. The word is applied to any English case of great interest and importance, as the Tichborne case, Queen Caroline's case, etc.

Cautio pro expensis, security for costs.

Caution, a species of bail; security.

Cautione admittenda, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future.—*Reg. Orig.* 66.

Cautioner, a security.

Cauzi, Cazi, Kazi, a Mahometan official.—*Indian.* See KAZI.

Caveat (*that he take heed*), a warning or caution. If a person desired to stop the

enrolment of a decree in Chancery, in order to present a petition of appeal to the Lord Chancellor, he entered a *caveat* with his Lordship's secretary, which prevented the enrolment for twenty-eight days. See APPEAL. It is sometimes entered to prevent the issuing of a lunacy commission. It is also entered to stay the probate of a will, letters of administration, a license of marriage, or an institution of a clerk to a benefice.

Caveat actor, caveat emptor (*let the doer—let the purchaser beware*).

Caveat emptor, qui ignorare non debuit quod jus alienum emit. Hob. 99.—(Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another.)

'If a man,' said Tindal, C. J. (*Brown* v. *Edgington*, 2 *Scott, N. R.* 504), 'purchase goods of a tradesman, without, in any way, relying upon the skill and judgment of the vendor, the latter is not responsible for their turning out contrary to his expectation; but, if the tradesman be informed at the time the order is given of the purpose for which the article is wanted, the buyer relying upon the seller's judgment, the latter impliedly warrants that the thing furnished shall be reasonably fit and proper for the purpose for which it is required.'

Caveat viator. (Let the traveller beware.) 'Suppose there is an enclosed yard with several dangerous holes in it, and the owner allows the public to go through the yard, does that cast on him any obligation to fill up the holes? Under such circumstances, *Caveat Viator*,' *per* Alderson, B., in *Cornwall* v. *Metropolitan Commissioners of Sewers*, 10 *Exch.* 771, 774.

Cavers, persons stealing ore from mines in Derbyshire, punishable in the berghmote or miners' court: also officers belonging to the same mines.

Cavil, to use a captious argument.

Ceap, a bargain: anything for sale; chattel: also cattle, as being the usual medium of barter. Sometimes used instead of Ceapgild, see next title.

Ceapgild [fr. *ceap*, Sax., cattle, and *gild*, payment], payment in cattle, market price.

Cede, to assign or transfer.

Cedent, an assignor.

Celibacy [fr. *cœlibatus*, Lat.], an unmarried or single state of life.

Cellerarius, a butler in a monastery; sometimes in universities called manciple or caterer.

Cemetery [fr. κοιμητήριον, Gk., fr. κοιμάω, to set to sleep], a place of burial, differing from a churchyard by its locality and incidents; by its locality, as it is separate and apart from any sacred building used for the performance of Divine service; by its incidents, that inasmuch as no vault or burying-place in an ordinary churchyard can be purchased for a perpetuity, in a cemetery a permanent burial place can be obtained. See *The Cemeteries Clauses Act*, 1847, 10 & 11 Vict. c. 65, *Chit. Stat.*, vol. i., tit. '*Burial*.'

Cenegild [fr. *cinne*, Sax., relation, and *gild*, payment], an expiatory mulct paid by one who killed another, to the kindred of the deceased.

Cenninga, notice given by a buyer to a seller that the thing sold was claimed by another, in order to appear and justify the sale.—*Athel. ap. Brompt.* c. iv.

Censaria [fr. *cenic*, Fr.], a farm or house and land let at standing rent.

Censarii, farmers.—*Blount.*

Censuales, a species or class of the *oblati* or voluntary slaves of churches or monasteries, *i.e.*, those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services.—*Potg. de Stat. Serv.* l. 1, c. i., ss. 6, 7.

Censumethidus, a dead rent, like that which is called *mortmain*.—*Blount.*

Censure [fr. *census*, Lat.], custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11*d.* per. poll, and 1*d.* per annum ever after: these thus sworn are called censores. Also a judgment which condemns some book, person, or action, or more particularly a reprimand from a superior.—*Surv. Dict. Corn.*

Census, a numbering of the people. It takes place in this country once in every ten years. The first was taken in 1801 under 41 Geo. III. c. 15; the last on Sunday, 5th April, 1891, under the Census Acts, 1890, 53 & 54 Vict. c. 61 (England), c. 38 (Scotland), and c. 46 (Ireland). Under these acts of 1890 the census papers contain 'particulars of the name, sex, age, rank, profession or occupation, condition as to marriage, relation to head of family, and birthplace of every living person who abode in every house on the night of Sunday, the 5th April, 1891.' The early census acts only got at the numbers, occupations, etc., by a series of questions to overseers, clergymen, etc. The Act of 1840, 3 & 4 Vict. c. 99, was the first to get at the name, etc., of every person in every house.

Population, for a particular purpose, is sometimes expressly directed to be ascertained 'by the last published census for the time being.' See e.g., Licensing Act, 1872, s. 65.

Census Regalis, the annual revenue (or income) of the Crown.

Centenarii, petty judges, under-sheriffs of counties, that had rule of a hundred, and judged smaller matters among them.—1 *Vent.* 211.

Centeni, the principal inhabitants of a district composed of different villages, originally in number a hundred, but afterwards only called by that name.

Centralisation. This word is used to express the system of government prevailing in a country where the management of local matters is in the hands of functionaries appointed by the Ministers of State, paid by the State, and in constant communication, and under the constant control and inspiration of the Ministers of State, and where the funds of the State are largely applied to local purposes. Such a system is contrasted with the English, under which a great portion of the affairs of every locality (see title *Local Government*) is managed by independent and self-governing institutions, such as municipalities, and by unpaid magistrates who, although appointed by the Crown and removable for just cause, are comparatively independent of the Ministers of the Crown for the time being, as they are not paid for their services.

Central Criminal Court. This court was erected in 1834, by 4 & 5 Wm. IV. c. 36, for the trial of all cases of treasons, murders, felonies, and misdemeanours committed within the city of London and county of Middlesex, and in certain specified parts of the counties of Essex, Kent, and Surrey, all of which constitute *one county* for the purpose of the act, and also commissions of gaol delivery to deliver the gaol of Newgate of the prisoners therein charged with any of the offences aforesaid. The court, which consists of the Lord Mayor and Aldermen and also of the Judges, sits at the sessions house in the Old Bailey; and there are usually twelve sessions held in every year, at times fixed by any eight of the judges at Westminster. Two provisions in this statute, and also several subsequent statutes, greatly augmented the jurisdiction of this tribunal, by first curtailing that of the courts of quarter sessions within the district assigned to the Central Criminal Court, and restraining them from trying nearly all the serious kinds of felony (4 & 5 Wm. IV. c. 36, s. 17); and by transferring it to the entire criminal jurisdiction of the Court of Admiralty (s. 22), following up in 1837, by 7 Wm. IV. and 1 Vict. cc. 84—89, by the operation of which all the serious offences punishable under them, if committed within the jurisdiction of the Admiralty, may be, and have ever since been, tried at the Central Criminal Court. Two of the judges usually attend each session for the purpose of trying the more important offences. All the judges of the High Court of Justice, except such as were appointed before the Jud. Act, 1873, and were not liable then to serve (s. 11), may be in the commission for the Central Criminal Court. The less important offences are tried by either the recorder or common serjeant or the judge of the City of London Court; on every occasion the lord mayor or some of the aldermen being also present on the bench. See 9 & 10 Vict. c. 24; 14 & 15 Vict. c. 55; and as to removal into this court of indictments for offences committed out of the jurisdiction, see 19 & 20 Vict. c. 16.

Central Office of Supreme Court. Established by Jud. (Officers) Act, 1879, 42 & 43 Vict. c. 78.

Ceola, a large ship.—*Blount.*

Cepi corpus et paratum habeo (*I have taken the body and have it ready*), a return made by the sheriff upon an attachment, *capias*, etc., when he has the person, against whom the process was issued, in custody.—*F. N. B.* 26.

Cepit in alio loco, a plea in replevin, when the defendant took the goods in another place than that mentioned in the declaration.—*Woodf. L. & T.*, 10th ed., 822.

Ceppagium, the stumps or roots of trees which remain in the ground after the trees are felled.—*Fleta*, c. xli.

Ceragrum, a payment to find candles in the church.—*Blount.*

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in judicium. (The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried.)—*Co. Lit.* 303*a*.

Certificando de recognitione stapulæ, a writ commanding the mayor of the staple to certify to the Lord Chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases.—*Reg. Orig.* 148, 151, 152.

Certificate, a testimony given in writing to declare or verify the truth of anything.

(2) Trial by certificate.—As to the kind of issue upon which this trial might occur, see 3 *Bl. Com.* 333. One of the most important of these was the issue *ne unques accouple en loial matrimonie.* This arose in the action of dower, in which the tenant might plead in bar that the defendant 'was never accoupled to her alleged husband in lawful matrimony.'

As to when certificates and examined copies are admissible in evidence, consult *Taylor on Evidence* s. 1441 *et. seq.*; and *Biddle's Table of References to the Statutes, voce*, 'Certified and Examined Copies.'

As to obligation of solicitors, conveyancers, notaries public and others to take out annual certificates, see Stamp Act, 1891, ss. 43—48.

Certification, in Scotch judicial procedure, is the assurance given to a party of the course to be followed in case he does not appear to obey the order of the Court.—*Bell's Dict.*

Certification of assize, a writ anciently granted for the re-examining or re-trial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial.

Certified Copy. As to when admissible in evidence, see *Taylor on Evidence*, ss. 1391, 1440 *et. seq.*, *and Biddle's Table of References to the Statutes, voce* 'Certified and Examined Copies.'

Certiorari (*to be more fully informed of*), an original writ issuing out of the Crown side of the Court of Queen's Bench (now the Queen's Bench Division of the High Court of Justice) in criminal cases, addressed, in the Queen's name, to the judges or the officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice, before such justices as shall be assigned to determine the cause.—*F. N. B.* 145, 242, 245.

Certiorari lies to remove into the Queen's Bench, which is the sovereign ordinary court of justice in criminal causes, all indictments, coroners' inquisitions, summary convictions by magistrates, orders of removal of paupers, and of poor's rates, also orders made by the poor law commissioners, commissioners of sewers, tithe commissioners, town councils, and railway companies, for the purpose of being examined and 'quashed,' if contrary to law. A *certiorari* is frequently granted, either (1) to consider and determine the validity of indictments, and the proceedings thereon, and to quash or confirm them as there is cause; (2) where it is surmised that a partial or insufficient trial will probably be had in the court below, the indictment is removed in order to have the person against whom it is found tried at the bar of the Queen's Bench; or before the justices of *Nisi Prius*; or (3) it is so removed in order to plead the royal pardon there. The writ may be granted either at the instance of the prosecutor or the defendant. A prosecutor was formerly entitled to a writ of *certiorari* as a matter of right, but a defendant could only obtain it by express leave of the Court, and upon his entering into recognisances; but to prevent abuses, by the wanton and improvident application for it, the 5 & 6 Wm. IV. c. 33, and 16 & 17 Vict. c. 30, s. 5, provide that a prosecutor must obtain the previous leave of the Court to issue it, and enter into recognisances; and these and other statutory provisions are incorporated in the Crown Office Rules, 1886, Rules 28—42 (see *Chitty's Statutes for* 1886, p. 16, tit. '*Certiorari*'), the Statute Law Revision Act of 1888 repealing 13 Geo. II. c. 18, so that procedure on *certiorari* in a very great measure depends on Rules of Court alone.

An appeal does not lie unless it be expressly given by statute, but *certiorari* always lies unless it be expressly taken away by statute, and special clauses in modern statutes have frequently taken it away. See, e.g., Public Health Act, 1875, s. 262; Railways Clauses Consolidation Act, 1845, s. 156; but even such clauses do not apply to cases where a decision is impeached for substantial want of jurisdiction (*Reg. v. Cheltenham Commissioners*, 1 *Q. B.* 467).

A *certiorari* to remove a conviction or order made by justices of the peace must be applied for within six months (13 Geo. II. c. 18, Crown Office Rule 33).

The removal of County Court actions by *certiorari* is regulated by s. 126 of the County Courts Act, 1888.

Certiorari, bill of, an original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the Court of Chancery, on account of some alleged incompetency of the inferior court, or some hardship in its proceedings.—*Stor. Eq. Pl.* 356; and 2 *Dan. Ch. Prac.*, 4th ed., 1435.

As to transfer of equitable actions from County Courts to the Chancery Division of the High Court, see s. 69 of the County Courts Act, 1888.

Cert Money, *quasi* certain money. Head-money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, and sometimes to the hundred. It is called *certum letæ* in ancient records.

Certum est quod certum reddi potest. 9 Co. 47.—(That is certain which can be rendered certain.) See illustrations of this maxim in *Broom's Legal Maxims*, 6th ed., p. 578.

Cerura, a mound, fence, or inclosure.

Cervisarii [fr. *cerevisia*, ale], tenants who paid a duty called by the Saxons *drinclean*, i.e., *retributio potus.—Domesday.*

Cess [fr. *asseoir*, Fr., to fix], an assessment, or tax. In Ireland, it was anciently applied

to an exaction of victuals, at a certain rate, for soldiers in garrison, and in modern times is equivalent to the English 'Rate.'

Cessante ratione legis cessat ipsa lex. Co. Litt. 70.—(The reason of the law ceasing, the law itself ceases.)

This maxim may be thus illustrated:—Where a contract not under seal, is made with an agent in his own name, for an undisclosed principal, and on which, therefore, either the agent or principal may sue, the defendant, as against the latter, is entitled to be placed in the same situation at the time of the disclosure of the real principal, as if the agent dealing in his own name had been in reality the principal, and this rule is to prevent the hardship under which a purchaser would labour, if after having been induced by peculiar considerations—such, for instance, as the consciousness of possessing a set-off—to deal with one man, he could be turned over and made liable to another, to whom those considerations would not apply, and with whom he would not willingly have contracted.—*Broom's Maxims*, 6th ed., p. 153.

Cessavit, a writ which lay (by the Statute of Gloucester, 6 Edw. I. c. 4, and Westminster 2, 13 Edw. I. c. 21) when a man who held lands by rent or other services, neglected or ceased to perform his services, for two years together, or where a religious house had lands given to it, on condition of performing some certain spiritual services, as reading prayers, giving alms, etc., and neglected it; in either of which cases, if the cesser or neglect had continued for two years, the lord, or donor, and his heirs, had a writ of cessavit to recover the land itself.—*F. N. B.* 208. This writ was abolished by 3 & 4 Wm. IV. c. 27.

Cesser, proviso for. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall cease when the trusts end. This proviso generally expresses three events:—(1) the trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them.—*Sug. V. & P.*, 14th ed., 621—3.

Cesset executio (*let execution stay*). Where defendants plead severally, if they be found guilty of the same trespass, the damages cannot be severed, but the jury who try the first issue shall assess damages against all; and there shall be a *cesset executio* until the other issues are tried, when the other defendants, if found guilty, shall be contributory to those damages.—11 *Co.* 6 *a*, 7 *a*.

Cesset processus, a stay of proceedings entered on the record.

Cessio bonorum (a surrender of goods). By the Roman law a *cessio bonorum* of the debtor was not a discharge of the debt, unless the property ceded was sufficient for that purpose. It otherwise operated only as a discharge *pro tanto*, and exonerated the debtor from imprisonment. Huberus informs us, that in Holland a *cessio bonorum* does not even exempt from imprisonment, unless the creditors assent; and Heineccius proclaims the same as the law of some parts of Germany. The Scottish law conforms to the Roman code in its leading outlines, and the modern code of France adopts the same system.—*Story's Conflict of Laws*, 492; and see 2 *Br. & Had. Com.* 623.

Cessio in jure, a fictitious suit, in which the person who was to acquire a thing claimed (*vindicabat*) the thing, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.—*Sand. Just.*, 7th ed., 90, 124.

Cession, a ceasing, yielding up, or giving over. By 21 Hen. VIII. c. 13 (repealed by 1 & 2 Vict. c. 106), if any one having a benefice of 8*l. per. annum*, or upwards, accepted any other, the first was adjudged void, unless he obtained a dispensation. A vacancy thus made, for want of a dispensation, was called cession.—1 *Bl. Com.* 392. See PLURALITY.

Cessionary Bankrupt, one who gave up his estate to be divided amongst his creditors.

Cessment, an assessment, or tax.

Cessor, he who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law.—*Old Nat. Br.* 136.

Cessure or **Cessor**, ceasing, giving over, departing from.

Cestui que trust, the person who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate of which is vested in a trustee. There is such a confidence between the *cestui que trust* and his trustee, that no action at law would lie between them (except where the trustee admitted that he had in his possession money belonging to the *cestui que trust*, in which case an action lay against the trustee), but resort must have been had to a Court of Equity. Now an action will be brought in the Chancery Division of the High Court. (Jud. Act. 1873, s. 34 (3).)

The phrase, *cestui que trust*, is Norman French. In the Roman law the trustee was commonly called *Hæres Fiduciarius*; and the *cestui que trust*, *Hæres Fidei Commissarius*. Mr. Justice Story prefers Fide commissary, as at least equally within the analogy of the English language. But the term 'Beneficiary' has not as yet acquired any general use in a different sense, and is gradually coming

into use. See TRUSTEE, and consult *Lewin on Trusts*.

Cestui que use, in old law tracts *cestui à que use*. Previously to the Statute 27 Hen. VIII. c. 10 (usually called the Statute of Uses), the use was an equitable or beneficial interest enjoyed by the *cestui que use*, distinct from the legal property in the land, which was held by the feoffee to uses. The Statute of Uses destroyed the intervening estate of the feoffee to uses, and transferred the possession to the *cestui que use*, converting his equitable or beneficial interest into a legal estate; thus the use and possession being incorporated, the separate existence of the use is virtually extinguished, and he, who was called the *cestui que use* before the statute, is now to all intents and purposes the legal owner, the use being executed in him. Thus a conveyance transmuting the possession to A. to the use of B., A.'s estate (feoffee to uses) is destroyed by the statute, the possession is given by B. (*cestui que use*), in whom the legal estate is vested. Consult 2 *Br. & Had. Com.* 525 *et seq.*

Cestui que vie, the person for whose life any lands, tenements, or hereditaments are held. See *Cestui que vie Production Act*, 6 Anne, c. 18.

Chacea, a station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a drove-way.—*Blount; Bract.* 1, 4, c. xliv.

Chasea est ad communem legem. Reg. Br. 806.—(A chace is by common law.)

Chaceare, *ad lapores vel vulpes.* To hunt hares or foxes.—*Cart. Abb. Glast. MS.* 87.

Chacurus [fr. *chasseur*, Fr.], a horse for the chase, or a hound, dog, or courser.

Chaffery, traffic; the practice of buying and selling.

Chaffwax, an officer in Chancery, who fitted the wax to seal writs, commissions, and other instruments. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Chain, an engineer's measure of 22 yards' length.

Chain Cables. See ANCHORS.

Chaldron, Chaldern, or **Chalder**, twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon twelve barrels or pitchers, a ton or chaldron, and 29 cwt. of 120 lbs. to the ton.

Chalking, or **Caulking**, stopping the seams in a ship or vessel.—*Rot. Parl.*, 50 *Edw. III.*

Challenge [fr. *challenger*, O. Fr., to accuse of], an exception taken either against things or jurors.

In civil actions, when a full jury appear, either party may challenge them for cause, as well the talesmen as the jurors originally returned. Challenges are of two kinds: (1) to the array; (2) to the polls, and each of these is again subdivided into principal challenges, and challenges to the favour.

(1) A challenge to the array is an exception to all the jurors returned by the sheriff collectively, not for any defect in them, but for some partiality or default in the sheriff or his under officer who arrayed the pannel; this is either (*a*) a principal challenge, as that the sheriff or other returning officer is of kindred or affinity to the plaintiff or defendant, if the affinity continue; that one or more of the jury are returned at the nomination of the plaintiff or defendant; that an action of battery is pending at the suit of the plaintiff or defendant against the sheriff, or at the suit of the sheriff against the plaintiff or defendant; that an action of debt is pending at the suit of the plaintiff or defendant against the sheriff, but not if by the sheriff against the plaintiff or defendant; that the sheriff or returning officer holds land depending upon the same title with that in litigation between the parties; that the sheriff, etc., is under the distress of the plaintiff or defendant; that the sheriff, etc., is counsel, attorney, officer, servant, or gossip of either party, or is an arbitrator in the same matter, and has treated thereof. (*β*) A challenge for favour, being such as implies at least a probability of bias or partiality in the sheriff, but does not amount to a principal challenge, as that the plaintiff or defendant is tenant to the sheriff, or that the parties are connected by marriage, etc. It seems very doubtful if the array in special jury cases can be challenged. Challenges to the array are, however, seldom resorted to, since for the causes above named, the jury-processes may be directed to the coroner, or they would be grounds for a new trial.

(2) A challenge to the polls, which is an exception to one or more of the jurors who have appeared individually: Either (*a*) a principal challenge, which may be subdivided into (a) challenge *propter honoris respectum*, as, if a lord of parliament be called, he may challenge himself or he may have his writ of privilege, but it is doubtful if either party can challenge him, 6 Geo. IV. c. 50, s. 2; (b) challenge *propter defectum*, that the juror is not qualified, or if a woman be impannelled she may be challenged *propter defectum sexûs*, unless it be on a writ *de ventre inspiciendo;* (c) challenge *propter affectum*, by reason of some supposed bias or partiality; (d) challenge *propter delictum*, when for some act of the juror, he has ceased to be, in con-

sideration of law, *probus et legalis homo.* (β) A challenge to the polls for favour is of the same nature with the principal challenge *propter affectum*, but of an inferior degree.

No challenge can be made before a full jury have appeared; a challenge to the polls is made *ore tenus*, that to the array in writing.

The trial of challenges to the array is entirely in the discretion of the Court; sometimes they are tried by two of the coroners, sometimes by two of the jury, sometimes by the Court itself. Challenges to the polls, if to the favour, are tried by two jurors, who have been sworn; if two have not been sworn, the Court appoints two indifferent persons to try them, thence called triers, who are superseded as soon as two jurors are sworn; a principal challenge to the polls is tried by the Court itself.—1 *Chit. Arch. Prac.*

In criminal cases, challenges may be made, either on the part of the Crown, or on that of the prisoner, and either to the whole array, or to the separate polls for the very same reasons that they may be made in civil cause. In capital cases, the prisoner, *in favorem vitæ*, is allowed an arbitrary and capricious species of challenge, without showing any cause at all, limited, in cases of treason, to thirty five, and in felonies to twenty.—6 *Geo. IV.* c. 50, s. 29; 7 & 8 *Geo. IV.* c. 28, s. 3. See *Archbold's Criminal Pleading.*

Challenges to fight, either by word or letter, or to be the bearer of such challenges, are misdemeanours, punishable by fine and imprisonment.—4 *Br. & Had. Com.* 173.

Chamber, the place where certain assemblies are held; also the assemblies themselves.

Chamber Clerks, of the Judges. As to their positions since the coming into force of the Judicature Acts, see Jud. Act, 1873, s. 79, amended by Jud. Act, 1875, s. 35.

Chamber of Commerce, an assembly of merchants and traders, where affairs relating to trade are treated of. There are establishments of this sort in most of the chief cities in France; and, in this country, chambers of this kind have been established.

Chamberdekins, or **Chamber-Deacons**, certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England, 1 Hen. V. cc. 7 & 8.

Chamberlain [fr. *chambellan*, Fr., *custos cubiculi cubicularius*, Lat.], a person who has the management or direction of a chamber or chambers. It is variously used in our laws, statutes, and chronicles. Among the most important are (1) *The Lord Chamberlain of Great Britain*, the sixth high officer of the Crown, to whom belongs the government of the palace at Westminster, and upon solemn occasions are delivered the keys of Westminster Hall; he disposes of the Sword of State, to be carried before the Queen when she comes to Parliament, and goes on the right hand side, next to the Queen's person; he has the care of providing all things in the House of Lords during its session; and the gentleman usher of the black rod, yeoman usher, etc., are under his authority. As to his power of licensing theatres in the metropolis, see 6 & 7 Vict. c. 68, and THEATRE. The office is hereditary. (2) *The Lord Chamberlain of the Household;* he has the oversight of all officers belonging to the Queen's chambers, except the precincts of the bedchamber. (3) *The Chamberlain of London;* who keeps the city money, presides over the affairs of the citizens and their apprentices, etc.

Chambers, are *quasi*-private rooms, in which the judges dispose of points of practice and other matters not sufficiently important to be heard and argued in Court. See SUMMONS, ORDER.

The jurisdiction of a judge at chambers depends partly on Statute and partly on the Common Law. An appeal lies to a Divisional Court or to a judge sitting in court according to the practice of the Division of the High Court to which the matter in question is assigned (Jud. Act, 1873, s. 50). By R. S. C. 1883, Ord. LIV., the masters in the Queen's Bench Division, and the Registrars in the Probate, Divorce, and Admiralty Division may exercise the jurisdiction of a judge in chambers (subject to appeal to a judge), except in matters relating to crime or to the liberty of the subject, and certain other matters set out in the above order. An appeal lies from a master to a judge at chambers by summons within four days; and from a master or judge to a Divisional Court by motion within eight days.

Chambers of the king [*Regiæ cameræ*]. The exclusive territorial jurisdiction of the British Crown over the inclosed parts of the sea along the coasts of the island of Great Britain has immemorially extended to those bays called the *King's chambers*: that is, portions of the sea cut off by lines drawn from one promontory to another.—*Wheat. Int. Law*, 234.

Chambre depeinte, anciently St. Edward's Chamber, called the Painted Chamber, destroyed by fire with the Houses of Parliament.

Champart, field-rent; champerty.

Champarty, or **Champerty** [fr. *champ parti*, Fr.; *campi partitio*, Lat., a division of the land, etc.], properly a bargain between a plaintiff or defendant in a suit and a third person, *campum partire*, to divide between

them the land or other matter sued for, in the event of the litigant being successful in the suit; whereupon the champertor is to carry on the party's suit or action at his own expense; or it is the purchasing the right of action, or suit of another person; illegal by common law, and also by 3 Edw. I. c. 25; 13 Edw. I. st. 1, c. 49, and 32 Hen. VIII. c. 9. See *Hutley* v. *Hutley*, *L. R.* 8 *Q. B.* 112; *In re Attorneys' and Solicitors' Act*, 1870, 1 Ch. D. 573.

Champertors, persons who move pleas or suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their proper costs, in order to have part of the land in variance, or part of the gain.—33 *Edw. I.* c. 2.

Champion, a person who fights a combat in his own cause, or in place of another.—*Bract.* l. 3, tr. 2, c. 21; 3 *Bl. Com.* 339.

Champion of the king or queen, an ancient officer, whose duty it was to ride armed *cap-à-pie* into Westminster Hall at the coronation, while the king was at dinner, and by the proclamation of a herald, make a challenge, 'that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat.' The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. This ceremony, long discontinued, was revived at the coronation of George IV., but not afterwards.

Chance, misfortune, accident, deficiency of will. Where a man commits an unlawful act by misfortune and chance, and not by design, his will not co-operating with the deed, such act wants one main ingredient of a crime. If an accidental mischief should follow from the performance of a *lawful* act, the party stands excused from all guilt; but if the act be felonious, and a consequence ensues not foreseen or intended, as the death of a man, or the like, his want of foresight shall be no excuse, for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow.

But a very important distinction is made in such cases, viz., whether the unlawful act is also in its original nature wrong and mischievous; for a person is not answerable for the incidental consequences of an unlawful act, which is merely *malum prohibitum*; as, where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.—*Fost.* 259; 1 *Hale's P. C.* 475.

Chancel, the part of a church in which the communion table stands; it belongs to the rector or the impropriator.—2 *Br. & Had. Com.* 420.

Chancellor, the Lord High [fr. *cancello*, Lat., to cancel], the highest judicial functionary in the kingdom, and superior, in point of precedency, to every temporal lord. He is appointed by the delivery of the Queen's great seal into his custody. He may not be a Roman Catholic (10 Geo. IV. c. 7, s. 12). He is a cabinet minister, a privy councillor, and prolocutor of the House of Lords by prescription (but not necessarily, though usually a peer of the realm), and vacates his office with the ministry by which he was appointed. When royal commissions are issued for opening the session, for giving the royal assent to bills, or for proroguing parliament, the Lord Chancellor is always one of the commissioners, and reads the royal speech on the occasion. To him belongs the appointment of all justices of the peace throughout the kingdom, and (see s. 8 of the Coroners' Act, 1887) the power to remove coroners. Being, in the earlier periods of our history, usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the Sovereign's conscience, visitor, in right of the Crown, of the hospitals and colleges of royal foundation, and patron of all the Crown livings under the value of twenty marks *per annum* in the King's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses—and all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Supreme Court of Judicature, of which he is the head. An ex-Chancellor is by virtue of s. 1 of the Jud. Act, 1891, an *ex-officio* judge of the Court of Appeal. See CHANCERY, SUPREME COURT OF JUDICATURE. There is also a Lord High Chancellor of Ireland; but the Chancellorship of Scotland was abolished at the Union.

Chancellor of a cathedral, one of the *quatuor personæ*, or four chief dignitaries of the Cathedrals of the Old Foundation. The duties assigned to the office by the statutes of the different chapters vary; but they are chiefly of an educational character, with special reference to cultivation of theology.

Chancellor of a diocese, or **of a bishop**, a law officer, appointed to hold the Bishop's Court in his diocese, and to adjudicate upon matters of ecclesiastical law. He is the vicar-general of the bishop, and must be a Doctor of Civil Law, so created in some university.—37 *Hen. VIII.* c. 17.

Chancellor of the Duchy of Lancaster, an

officer before whom, or his deputy, the Court of the Duchy Chamber of Lancaster is held. This is a special jurisdiction concerning all matters of equity relating to lands held of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the county palatine (which has also its separate chancery for sealing of writs or the like), and comprises much territory lying at a vast distance from it, as particularly a very large district surrounded by the city of Westminster. The proceedings in this Court are the same as were those in the High Court of Chancery; so that it seems not to be a court of record, and indeed it has been holden that the Court of Chancery had a concurrent jurisdiction with the Duchy Court, and might take cognisance of the same causes. The jurisdiction of the Court of Chancery as a Court of Appeal from the Duchy Court of Lancaster is now transferred to the Court of Appeal (Jud. Act, 1873, s. 18).—3 *Bl. Com.* 78. See COUNTY PALATINE.

Chancellor of the Exchequer, a Minister of State having special care of the revenue, who is entitled to precedence in the High Court on the nomination of sheriffs.

Chancellor of the Order of the Garter, *and other military orders*, an officer who seals the commissions and the mandates of the chapter and assembly of the knights; keeps the register of their proceedings, and delivers their acts under the seal of their order.—*Stow's Annals*, 706.

Chancellor of the two Universities, the president of those bodies, the office being honorary.

The Chancellors' Courts in the two Universities enjoy the sole jurisdiction, in exclusion of the Queen's Courts, when a scholar or privileged person is one of the parties, over all civil actions and suits whatsoever, excepting where a right of freehold is concerned, and of all injuries and trespasses against the peace, mayhem and felony excepted (*Brown* v. *Renouard*, 12 *East*, 13; *Thornton* v. *Ford*, 15 *East*, 635); and these, by the University charter, they are at liberty to try and determine, either according to the Common Law of the land, or according to their own local customs, at their discretion. The judge of the Chancellor's Court at Oxford is the Vice-Chancellor, who is deputy or assessor. By 17 & 18 Vict. c. 81, s. 45, the Court of the Vice-Chancellor of Oxford is now governed by the Common and Statute Law of the realm, and no longer by the rules of the Civil Law. And see 18 & 19 Vict. c. 36; 19 & 20 Vict. cc. 31 & 95; and 20 & 21 Vict. c. 25. As to Cambridge, the right of the University, or any member thereof, to claim conusance of any action or criminal proceedings wherein any person who is not a member of the University is a party, has ceased.—19 & 20 *Vict.* c. 17, s. 18, and see c. 88.

Chance-medley [fr. *chaude meslée*, Fr.; fr. *chaud*, hot, and *meslée*, fray, *mesler*, *meler*, to mingle, *mescolare*, It. When the element *chaud* lost its meaning to ordinary English ears, it was replaced by *chance*, in accordance with the meaning of the compound.—*Wedgw.*], a casual affray. Such killing of a person as happens either in self-defence on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief.—1 *Hawk. P. C.* c. xxx. s. 1. It is sometimes termed *chaud-medley*, which more properly signifies an affray in the *heat* of blood or passion.

It is frequently difficult to distinguish this species of homicide, upon chance-medley in self-defence, from that of manslaughter in the proper legal sense of the word. But the true criterion between them seems to be this: When both parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer has not begun to fight, or, having begun, endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide, excusable by self-defence. For which reason the law requires that the person who kills another in his own defence should have retreated as far as he conveniently or safely can to avoid the violence of the assault before he turns upon his assailant, and that not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding another's blood. The Civil Law, in this respect, goes further than ours—'*qui cum aliter tueri se non possunt, damni culpam dederint, innoxii sunt.*' (Those who, when they cannot otherwise defend themselves, destroy their assailants, are innocent.)—4 *Bl. Com.* 184; 4 *Br. & Had. Com.* 216.

Chancery [fr. *cancelli*, *cancellarii*, Lat.; *chancellerie*, Fr.]. The Court of Chancery was the highest court of judicature in this kingdom next to parliament.

For some purposes it may still be said to exist as an Independent Court; but as a Court of Justice its powers and jurisdiction are now transferred to (1) The High Court of Justice, and (2) The Court of Appeal (Jud. Act, 1873, ss. 16—18).

(I.) There is now by the Judicature Act, 1873, a division of the High Court of Justice called the Chancery Division. To this Division are assigned (1) matters in which the Court of Chancery had exclusive statutory

jurisdiction (except County Court appeals), and (2) causes and matters for the administration of estates of deceased persons, dissolutions of partnerships, or taking of partnership or other accounts; redemption and foreclosure of mortgages, raising of portions or other charges on land; sale and distribution of proceeds of property subject to a lien or charge; execution of trusts, charitable or private; rectification, setting aside, or cancelling deeds or other written instruments; specific performance of contracts between vendors and purchasers of real estates, including contracts for leases; partition or sale of real estates; wardship of infants and care of their estates.

(II.) The powers and jurisdiction of the Court of Appeal in Chancery, formerly consisting of the Lord Chancellor and Lords Justices of Appeal in Chancery, are now transferred to the Court of Appeal (Jud. Act, 1873, s. 18, subd. 1). See APPEAL, COURT OF. But the jurisdiction of the Lords Justices in respect of lunatics is vested in the existing Lords Justices so long as they remain judges of the Court of Appeal, and afterwards is to be vested in such judges of the High Court or the Court of Appeal as the Crown shall appoint. (Jud. Act, 1875, s. 7.)

The practice of the Chancery Division of the High Court is now regulated by the Judicature Acts, 1873 and 1875, and the Rules of the Supreme Court. See the various titles relating to Practice and Procedure.

As to the investment of money paid into the Chancery Division of the High Court, see 35 & 36 Vict. c. 44, and the Supreme Court Funds Rules, 1886.

Chancery Common Law Seal, for the sealing of writs, etc., out of the Petty Bag Office. —12 & 13 *Vict.* c. 109, ss. 11, 14. See now the 37 & 38 Vict. c. 81, s. 5.

Chancery Court of York. See 37 & 38 Vict. c. 85, s. 7, and ARCHES COURT.

Chancery (Great Seal [Offices] Abolition Act). See 37 & 38 Vict. c. 81.

Chancery Regulation Act, 1862, 25 & 26 Vict. c. 42, for England, and 25 & 26 Vict. c. 47, for Ireland.

Chandala, the most degraded Hindoo caste.

Changer, or **Chaunger,** an officer belonging to the mint, who exchanges coin for bullion brought in by merchants or others.—6 *Hen. II.* c. 12.

Changing of Solicitor. Before 1883, no solicitor could be changed without the order of a judge, but by R. S. C. 1883, Ord. VII., Rule 2, the change can be affected by a mere notice.

Chanter. The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

Chantry, or **Chauntry** [fr. *cantaria*, Lat.], a little church, chapel, or particular altar, endowed with lands, or other revenues, for the maintenance of priests, to sing mass, etc., for the souls of the donors, etc. See 1 Edw. VI. c. 14, abolishing them.

Chapel [fr. *chapelle*, Fr.], a building either adjoining to a church, for performing divine service, or separate from the mother-church, where the parish is large, and then called a *chapel of ease*, for the accommodation of those parishioners who dwell at a distance from the parish church. These may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom, though subject in some respects to the mother-church. —2 *Inst.* 363.

In an act of parliament 'chapel' means a Church of England chapel only, unless words be used as in the Parliamentary Registration Act, 1843, 6 Vict. c. 18, s. 23, showing that places of worship which do not belong to the Established Church are to be included.

Chapelry, the precincts and limits of a chapel.

Chaperon, a hood or bonnet anciently worn by the knights of the garter, as part of the habit of that noble order; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral.

Chapitre [fr. *capitula*, Lat., chapters of a book], a summary of matters to be inquired of or presented before justices in eyre, justices of assize, or the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest.—*Britton*, c. iii.

Chaplain [fr. *capellanus*, Lat.], an ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel.—4 *Rep.* 90.

Chaplain of the Queen's Prison. He is appointed by the Secretary of State for the Home Department during pleasure. See 5 & 6 Vict. c. 22, s. 22.

Chapman [fr. *ceapman*, Sax.], a cheapener, one that offers as a purchaser; also a seller. —*Webster*.

Chapter [fr. *capitulum*, Lat.], a congregation of ecclesiastical persons in a cathedral church, consisting of canons, or prebendaries whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporality and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed *capitulum*, as a kind of head, instituted not only to assist

the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation.—*Burn's Dict.*

Character. Witnesses to speak to the good character of a prisoner are called in his defence, and, if they speak to nothing else, it is the custom that the counsel for the prosecution should not reply. It is not allowable to state any particulars of the prisoner's conduct, either in proof of his good or bad character; but if he call witnesses to his good character, a previous conviction against him may be put in evidence. Witnesses to the bad character of a prisoner can be called only to contradict witnesses to his good character, and evidence so called must be confined to general reputation (*R.* v. *Rowton*, *Leigh and Cave*, 530), but a previous conviction may then be given in evidence.—14 & 15 *Vict.* c. 19, s. 9.

Charge, the instructions of a judge to a grand jury; the judge's summing up of the evidence at a trial by jury; the periodical address of a bishop or archdeacon to his clergy; the taking proceedings against a prisoner; an obligation imposed on property; a commission.

Charge (v.a.), to lay a duty upon any one, to acquaint any with the nature of their duty. See CHARGE SHEET. The clerk of the arraigns *gives* the prisoner *in charge* to the jury, by reading an abstract of the indictment, and they are bound to proceed to deliver him until they are discharged. To prefer an accusation against any one.

Charge and Discharge, the old mode of taking accounts in Chancery. For an explanation of it, see *Dan. Ch. Pr.*, 4th ed., 1139 *n.*

Chargé d'affaires, a diplomatic representative at a foreign court, to whose care are confided the affairs of his nation.

Charges, expenses, costs.

Charge-sheet, a paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty.

Charging order, an order obtained from a Court or judge under 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, and R. S. C. 1883, Ord. XLVI., binding the stocks or funds of a judgment debtor with the judgment debt. See 23 & 24 Vict. c. 127, ss. 27—29, as to solicitors' costs.

Charitable Uses and Trusts. The 9 Geo. II. c. 26, commonly called 'The Mortmain Act,' after reciting that gifts or alienations of land in mortmain (see MORTMAIN) were prohibited by *Magna Charta* and other wholesome laws as prejudicial to the common utility, and that such public mischief had greatly increased by many large and improvident dispositions, made by *languishing or dying persons to charitable uses*, to take place after their deaths to the disherison of their lawful heirs, enacted that no *lands* or other hereditaments whatsoever, nor money, or personal estate to be laid out in land should be given to any person or bodies corporate, or charged by any person in trust, of any charitable uses; unless such gift, etc., should be made by deed executed *twelve months* before the death of the donor, and be enrolled in the Court of Chancery within *six calendar months* after execution: and be without any power of revocation for the benefit of the donor.

The act itself excluded dispositions of lands, to or in trust for either of the two universities in England (Oxford and Cambridge), or any of the colleges therein, or to or in trust for the colleges of Eton, Winchester, or Westminster, for the better support and maintenance of the scholars upon the foundations thereof; and various Acts of Parliament passed from time to time have also specially exempted devises of lands or moneys charged thereon to the trustees of the British Museum for the benefit of that institution (5 Geo. IV. c. 39, s. 3); or to the governors of Queen Anne's Bounty (2 & 3 Anne c. 11, s. 4; 43 Geo. III. c. 136, s. 1; and 45 Geo. III. c. 84, s. 3); the commissioners of Greenwich Hospital, and of the Royal Navy Asylum; the members of the Seamen's Hospital Society; the governors of St. George's Hospital; and of the Foundling Hospital (13 Geo. II. c. 29); and of 'Public Schools' (32 & 33 Vict. c. 58, s. 2); also public parks, museums, or libraries (34 & 35 Vict. c. 13); together with a few other public charities. (See full list in 'Index to Statutes Revised,' tit. '*Mortmain.*')

The strictness of the Act was further relaxed in the case of gifts of land for schools by the 'School Sites Acts,' 4 & 5 Vict. c. 38, s. 16, and 7 & 8 Vict. c. 37, s. 3, and, generally, by 24 Vict. c. 9, which provided that a conveyance for charitable uses should not be void by reason of containing certain stipulations for the donor's benefit, and dispensed with a deed in the case of copyholds, and by other statutes. The Act itself, together with eight amending Acts, is repealed by the consolidating Mortmain and Charitable Uses Acts, 1888, 51 & 52 Vict. c. 42, which re-enacts them in substance, though the phraseology is much altered.

A very important amendment of the law of charitable uses was effected in 1891 by the

Mortmain and Charitable Uses Act, 1891, 54 & 55 Vict. c. 73, the effect of which is that money secured on land and other personal estate arising from or connected with land (which as savouring of the realty had been held to be within the Act of 26 Geo. II., see *Attorney-General* v. *Meyrick*, 2 Ves. 44), may be devised to charitable uses, and that even land itself may be so devised, though the Act provides that it must be sold within one year from the death of the testator. See CHARITIES.

Charities, or public trusts. One of the earliest fruits of the Emperor Constantine's zeal, or pretended zeal, for Christianity, was a permission to his subjects to bequeath their property to the church. This permission was soon abused to so great a degree as to induce the Emperor Valentinian to enact a mortmain act by which it was restrained. But this restraint was gradually relaxed; and in the time of Justinian, it became a fixed maxim of Roman jurisprudence, that legacies to pious uses (which included all legacies destined to works of charity, whether they related to spiritual or temporal concerns), were entitled to peculiar favour, and to be deemed privileged testaments.

The high authority of the Roman law, coinciding with the religious notions of the times, could hardly fail to introduce these principles of pious legacies into our Common Law; and the zeal and learning of the ecclesiastical tribunals must have been constantly exercised to enlarge their operation. Lord Thurlow was clearly of opinion that the doctrine of charities grew up from the Civil Law; and Lord Eldon, in assenting to that opinion, has judiciously remarked, that, at an early period the ordinary had the power to apply a portion of every man's personal estate to charity; and when afterwards the statute compelled a distribution, it is not impossible that the same favour should have been extended to charity in wills, which by their own force purported to authorize such a distribution.

Charity (as Sir William Grant has justly observed), in its widest sense, denotes all the good affections men ought to feel towards each other; in its more restricted and common sense, relief to the poor. In English Law it means a general public use, and comprehends 'relief of aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities; repairs of bridges, ports, havens, causeways, churches, sea-banks, and highways; education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other taxes.' These are the words of the preamble to 43 Eliz. c. 4, which is amongst the many statutes repealed by the consolidating Mortmain and Charitable Uses Act, 1888, 51 & 52 Vict. c. 52, but s. 13, subs. 2 of that Act, recites this definition at length, and provides that 'whereas in divers enactments and documents reference is made to charities within the meaning of the said Act,' 'references to such charities shall be construed as references to charities within the meaning of the said preamble.'

It is clear that no superstitious uses are within the purview of the statute; such as are gifts of money for the finding or maintenance of a stipendiary priest; or for the maintenance of an anniversary or obit; or for prayers for the dead; or for such purposes as the superior of a convent, or her successor, may judge expedient. But there are certain uses which though not within the letter, are yet deemed charitable within the equity of the statute. Such is money given to maintain a preaching minister; to maintain a schoolmaster in a parish; for the setting up a hospital for the relief of poor people; for the building of a sessions-house for a city or county; for the making of a new, or for the repairing of an old pulpit in a church; or for the buying of a pulpit-cushion, or pulpit-cloth; or for the setting of new bells where there were none, or for mending of them when they are out of repair.

Charity Commissioners. Charitable trusts are under the control of four commissioners; two of whom must be barristers of not less than twelve years' standing, who are appointed to secure their due administration. Their powers and duties are to be found in the Charitable Trusts Acts, 1853, 1855, 1860, and 1869; and see particularly 37 & 38 Vict. c. 87, whereby all powers and authorities by the Endowed Schools Acts (see that heading) vested in the Endowed School Commissioners, are transferred to the Charity Commissioners.

Charre of lead, thirty pigs of lead.

Charta Chyrographata, or **Communis,** an indenture.

Charta de non ente non valet. Co. Litt. 36.—(A charter concerning a thing not in existence avails not.)

Charta de una parte, a deed-poll.

Charta est legatus mentis. Ibid.—(A deed is the representation of the mind.)

Charta non est nisi vestimentum donationis.

Ibid.—(A deed is nothing else than the vestment of a gift.)

Chartæ libertatum are Magna Charta (see that title) and Charta de Foresta.

Charta de Foresta is taken from the roll of 25 Edward I., and has a confirmation of that date prefixed to it, similar to that prefixed to *Magna Charta*. This charter, though of infinite importance at the time it was made, contains in it nothing interesting to a modern lawyer, any further than as it gives some specimen of the nature of the institution of Forest Laws, and the burthens thereby brought on the subject. It contains sixteen chapters.—1 *Reeves*, c. v. 254; 4 *Bl. Com.* 423; 4 *Br. & Had.* 505.

Chartarum super fidem mortuis testibus ad patriam de necessitudine recurrendum est. Co. Litt. 36.—(The witnesses being dead, the truth of charters must of necessity be referred to the country, i.e., a jury.)

Chartel [fr. *cartel*, Fr.], a letter of defiance or challenge to a single combat; also an instrument or writing between two states for settling the exchange of prisoners of war.

Charter [fr. *charta*, Lat.; *chartre*, Fr.], an evidence of things done between man and man. *Charters of the Queen* are written instruments granting certain privileges or exemptions to towns (see, e.g., the Municipal Corporations Act, 1882, s. 210) or corporations; e.g. to 'chartered' banking or other trading companies (see 7 Wm. IV. & 1 Vict. c. 73, and Chartered Companies Act, 1884, 47 & 48 Vict. c. 56), or to a college or university (see College Charter Act, 1871, 34 & 35 Vict. c. 63), or to the Apothecaries Company, whose charter, granted by James I., is cited in 55 Geo. III. c. 194. *Charter of pardon*, forgiving a felony or other offence committed against the Crown and its dignity. *Charter of the forest* comprises the laws of the forest.—*Fleta*, l. 3, c. 14; *Co. Litt.* 6.

Chartered ship, a ship hired or freighted.

Charterer, a person who charters or hires a ship for a voyage or for a certain period; also a Cheshire freeholder.—*Sir P. Ley's Antiq.* f. 356.

Charter-land, otherwise called *bookland*, properly held by deed under certain rents and free-services. It in effect differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same.—2 *Bl. Com.* 90.

Charter-party [fr. *charta partita*, Lat., a divided charter; *charte partie*, Fr. According to Boyer, the derivation of the word is 'quia per medium charta incidebatur et sic fiebat charta partita,' because when notaries were less common there was only one instrument made for both parties; this they cut in two, and gave each his portion, joining them together at their return, to know if each had done his part.—4 *Encyc. Brit.* 1797, 360], an agreement in writing, by which a ship owner agrees to let an entire ship, or part thereof, to a merchant, for the carriage of goods on a specified voyage, or during a specified period, for a sum of money which the merchant agrees to pay as freight for their carriage. By such an agreement the ship is said to be *chartered* to the merchant, who is called the *charterer*. There are certain terms usually to be found in all charter-parties, e.g., a statement of the burthen of the ship, an undertaking by the ship-owner that the ship, being seaworthy and furnished with necessaries, shall be ready by a certain day to receive the cargo, shall sail when loaded, and deliver her cargo at her port of destination (the act of God or the king's enemies excepted), the charterer undertaking to load and unload the ship, within a certain number of days, called the *lay* or *running* days, and if he detain her longer, to pay *demurrage*, i.e., a certain sum of money for an extra day, and also to pay freight agreed. See 2 *Instit.* 673; see the works *on Shipping* of *Abbot*, *Maude & Pollock*, or *Maclachlan*.

Chartis reddendis, an ancient writ which lay against one who had charters of feoffment entrusted to his keeping and refused to deliver them.—*Reg. Orig.* 159.

Chase [fr. *chasse*, Fr.], a privileged place for the preservation of deer and beasts of the forest, of a middle nature between a forest and a park. It is commonly less than a forest and not endowed with so many liberties, as officers, laws, courts; and yet it is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not enclosed, yet it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own.—*Manw.* 49.

Chastisement. As to the correction of a child by its parent, an apprentice or scholar by his master, or a criminal by an officer, see *Addison on Torts.*

Chattel interests. The difference between freeholds and non-freeholds, or chattel-interests, consists, for the most part, in the fixity or non-fixity of their duration. It is the latter property, viz., uncertainty, that characterizes a freehold; it is the former, viz., certainty, that characterizes a non-freehold. Hence every tenancy of a definite duration is a term, i.e., a period accurately ascertained during which the interest or

estate is to endure. The non-freeholds are deemed merely chattel-interests, and differ from freeholds not only in quantity but in order and kind; for freeholds are considered of greater interest than non-freeholds, and therefore if a term of 1000 years and an estate for life vest in the same person, in the same right, the term will merge in the life estate, unless an intervening estate prevent such an union of interests. Chattel-interests devolve upon the personal representatives of the owner. Five species of estates rank as chattel-interests:—(*a*) for years; (*b*) from year to year; (*c*) at will; (*d*) by *elegit*; and (*e*) on sufferance.

Chattels, or **Catals** [fr. *catalla*, Lat.; *chatel*, Fr.; *chaptel*, Old Fr.], goods movable and immovable, except such as are in the nature of freehold or parcel of it. They are either 1) *personal*, which belong immediately to the person of the owner, and for which, if they are injuriously withheld from him, he has no other remedy than by a personal action; (2) *real*, which either appertain not immediately to the person, but to some other thing by way of dependency, as a box with writings of land; or issue out of some immovable thing, as a lease, or rent for a term of years: and they concern the realty, lands, and tenements; such as an interest in advowsons, in statutes-merchant, and the like.—1 *Inst.* 118. See CATALLA.

Chaud-medley. See CHANCE-MEDLEY.

Chaumpert, an ancient tenure.—*Blount.*

Chauntry rents, money paid to the Crown by the servants or purchasers of chauntry-lands.—22 *Car. II.* c. 6.

Cheap, *subst.* purchase, bargain; *adj.* low in price. The word cheap forming part of the name of a place, denotes that in that place there was a market, e.g., Cheapside, Eastcheap, Westcheap.

Cheap trains. Early in the history of railways, the companies were compelled by 7 & 8 Vict. c. 85, sometimes called the Cheap Trains Act, to run one train a day at a penny a mile fare; in respect of which trains (ss. 6, 7), termed 'parliamentary trains,' or 'Government trains,' the companies were exempt from the passenger duty otherwise chargeable. Disputes arising between the companies and the Government as to the extent of this exemption, the Cheap Trains Act, 1883, 46 & 47 Vict. c. 34, abolished the duty altogether on all fares not exceeding one penny per mile, and empowered the Board of Trade to require any company to provide proper accommodation at such fares, and also reasonable accommodation for workmen going to, and returning from their work.

Cheat. See CHEATS.

Cheaters, or **Escheators**, were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb to *cheat* was derived.—*Wedgw.*

Cheats, deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice, by causing an illiterate person to execute a deed to his prejudice, or reading it over to him in words different from those in which it is written; selling one commodity for another, or using false weights and measures, and the like.—1 *Hawk.* 188. 'If a person in the course of his trade or business, openly and publicly carried on, put a false mark or token upon an article so as to pass it off as a genuine one, when in fact it is only a spurious one, and the article is sold and money obtained by means of that false mark or token, that will be a cheat at Common Law.'—Per *Cockburn, C. J.*, in *R.* v. *Closs*, 27 *L. J. M. C.* 54. Cheating at play is punishable in like manner as obtaining money by false pretences, under 8 & 9 Vict. c. 109, s. 17.

Check, Cheque, or **Draft**. See CHEQUE.

Check-roll, a list or book, containing the names of such as are attendants on, or in the pay of the Queen or other great personages, as their household servants.—19 *Car. II.* c. 1.

Check-weigher. A person appointed under ss. 13 & 14 of the Coal Mines Regulation Act, 1887, by the majority ascertained by ballot of the persons employed in a coal mine who are paid according to the weight of the mineral gotten by them, and stationed at their own cost at each place appointed for the weighing of the mineral to take a correct account of the weight.

Chelsea Hospital. See 47 Geo. III. st. 2, c. 25; 55 Geo. III. cc. 125, 136; 7 Geo. IV. c. 16; 2 & 3 Wm. IV. c. 106, ss. 3, 4; 5 & 6 Vict. c. 70; 6 & 7 Vict. cc. 31, 95; 9 & 10 Vict. cc. 9, 10; 10 & 11 Vict. cc. 4, 54; 11 & 12 Vict. cc. 84, 103; 19 & 20 Vict. c. 15.

Chelsea Hospital Out-pensioners. See 5 & 6 Vict. c. 70, and 19 & 20 Vict. c. 15.

Chemists and Druggists. See 55 Geo. III. c. 194, s. 28; 15 & 16 Vict. c. 56, and 31 & 32 Vict. c. 121.

Cheque. An order addressed to a banker requesting him to pay to (*a*) the person therein mentioned, or his order, or (*b*) the person therein mentioned, or the bearer of the

cheque, the sum of money therein mentioned: defined in the 'codifying' Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 73—by which such provisions of the Bills of Exchange Act as are applicable to a bill of exchange payable *on demand* apply also to a cheque—as a 'Bill of Exchange drawn on a banker payable on demand.'

Chester, was declared to be no longer a county palatine by 11 Geo. IV. & 1 Wm. IV. c. 70, s. 13. See 3 *Reeves*, 156. As to Chester Courts, see 30 & 31 Vict. c. 36.

Chevage, Chevagium, or Cherage [fr. *chef*, Fr.], a tribute sum of money formerly paid by such as held land in villenage to their lords in acknowledgment, and was a kind of head or poll money.—*Bract.* l. 1, c. x.

Chevantia [fr. *chevance*, Fr.], a loan or advance of money upon credit; also goods, stock, etc.—*Cowel.*

Chevisance [fr. *chevir*, i.e., *venir à chef de quelque chose*, Fr., to come to the end of a business], an agreement or composition; an end or order set down between a creditor or debtor: an indirect gain in point of usury, etc.; also an unlawful bargain or contract.

Chezé, a homestead or homesfall which is accessory to a house.—*Div. of Purl.* 162, *note.*

Chicane [fr. *chicaner*, Fr., to wrangle], the use of tricks and artifice.

Chief Baron of the Exchequer, the presiding judge in the Court of Exchequer, and afterwards in the Exchequer Division of the High Court of Justice, with whom five *puisne* judges were associated. In 1881, after the death of Lord Chief Baron Kelly, the office was abolished by Order in Council under s. 31 of the Jud. Act, 1873, and merged in that of Chief Justice of England.

Chief Clerks of Judges in Equity, appointed under 15 & 16 Vict. c. 80, s. 16, to act in the place of the abolished Masters in Ordinary. For their duties see *Smi. Eq. Pr.* 506; and *Dan. Ch. Pr.* They are continued in office under the judges of the Chancery Division of the High Court of Justice, by Jud. Act, 1873, ss. 77—86.

Chief Justice of England, the presiding judge in the Queen's Bench Division of the High Court of Justice, and in the absence of the Lord Chancellor, President of the High Court, and also an *ex-officio* judge of the Court of Appeal (Jud. Act, 1873, s. 5; Jud. Act, 1875, s. 4). The full title is, 'Lord Chief Justice of England.'

Chief Justice of the Common Pleas, the presiding judge in the Court of Common Pleas, and afterwards in the Common Pleas Division of the High Court of Justice, and one of the *ex-officio* judges of the High Court of Appeal (Jud. Act, 1873, s. 5, and Jud. Act, 1875, s. 4). He had five (formerly four, until 31 & 32 Vict. c. 125, see s. 11) *puisne* judges associated with him. In 1881, after the promotion of Lord Chief Justice Coleridge to the office of Lord Chief Justice of England, the office was abolished by Order in Council under s. 31 of the Jud. Act, 1873, and merged in that of Lord Chief Justice of England.

Chief-rents [fr. *reditus capitales*, Lat.], the annual payments of freeholders of manors; also denominated quit rents (*quieti reditus*), because thereby the tenant goes free of all other services. See MANOR.

Chief, tenants in, persons who held their lands immediately under the king (*in capite*), in right of his Crown and dignity.

Chiefrie, a small rent paid to the lord paramount.

Chievance, usury.

Childbearing. The English law admits of no presumption as to the time when a woman ceases to bear children, though this enters into most other codes.—*Beck's Med. Juris.*, 148, 402. The possibility of bearing a child after the age of fifty-four was recognised in *Croxton* v. *May*, 9 *Ch.* 388.

Children. As to the employment of, in factories, workshops, etc., see FACTORY, and consult *Notcutt on the Factory Acts.* See also the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 4 *et seq.*; the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 4 *et seq.*; and see EDUCATION. The employment of children under fourteen in dangerous public performances is punishable under the Children's Dangerous Performances Act, 1879, 42 & 43 Vict. c. 34; and the sale of intoxicating liquor to children under thirteen, for consumption on the premises, under the Intoxicating Liquors Sale to Children Act, 1886, 49 & 50 Vict. c. 56.

The Prevention of Cruelty to and Protection of Children Act, 1890, 52 & 53 Vict. c. 44, provides special penalties for the ill-treatment of boys under fourteen, or girls under sixteen, by persons over sixteen having charge of them, giving power to increase the penalties up to 200*l.* where the offender is interested in the death of the child; and also penalties for causing children to beg in the street, etc. By s. 9, where a person is charged with an offence in respect of a child alleged in the charge to be under any specified age, and the child appears to the Court to be under that age, 'such child shall for the purposes of this Act be deemed to be under that age, unless the contrary be proved.'

The admissibility of the evidence of a child of tender years depends upon the degree of understanding it possesses, and the religious education it has received. Under the Criminal Law Amendment Act, 1885 (see s. 4), the evidence of a child not understanding the nature of an oath may be received, though not given on oath, to prove assaults on young girls, etc.—See *Tayl. on Evid.*, s. 1249.

Above fourteen a child is presumed to be *doli capax*, but between seven and fourteen a child is presumed to be *doli incapax*; though the rule prevails that '*malitia supplet ætatem.*' Under seven a child cannot be guilty of felony.

As to the custody of children by persons other than their parents, see *Reg.* v. *Barnardo* [1891], 1 Q. B. 194—C.A. and the Custody of Children Act, 1891, 54 Vict. c. 3. And see further generally *Infants.*

Child-stealing. See 24 & 25 Vict. c. 100, s. 56.

Childwite, a fine or penalty of a bond-woman unlawfully begotten with child.—*Cowel.*

Chiltern Hundreds. A member of the House of Commons cannot resign his seat. He may, however, become disqualified by acceptance of office of profit under the Crown. A member therefore usually vacates his seat by the acceptance of the stewardship of the Chiltern Hundreds, or some other nominal office in the gift of the Chancellor of the Exchequer. The practice began about the year 1750; but the duties of the stewardship have long since ceased, and the office is but retained to serve this particular purpose. The Chiltern Hills are a range of chalk eminences separating the counties of Bedford and Hertford, passing through the middle of Bucks from Tring in Hertfordshire to Henley in Oxfordshire. Formerly these hills were covered with thick beechwood, and sheltered numerous robbers; to put these marauders down, and protect the inhabitants of the neighbourhood from their depredations, an officer was appointed under the Crown, called the Steward of the Chiltern Hundreds, which were Burnham, Desborough, and Stoke.

The Crown, for the convenience of the House at large, is always ready to confer on any member 'the Stewardship of Her Majesty's Chiltern Hundreds, the Stewardship of the Manor of Poynings, of East Hendred and Northstead, or the Escheatorship of Munster,' sinecures which he continues to hold till some other member solicits a similar accommodation.—*Dod's Parl. Comp.*

Chimin [fr. *chemin*, Fr.], a way, either the Queen's highway (*chiminus reginæ*), or a private way: the first is that over which the subjects of this realm, and all others under the protection of the Crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another by prescription or charter. This is divided into *chimin in gross*, where a person holds a way principally and solely in itself, and *chimin appendant*, where a person has it as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through and over other land, over which otherwise he might not pass.—*Kitch.* 117; *Co. Litt.* 56.

Chiminage, or **Pedagium,** toll due by custom for having a way through a forest. —*Co. Litt.* 56.

Chimney-money, or **Hearth-money,** a crown duty for every fireplace in a house.—14 *Car. II.* c. 2. Long since repealed.

Chimney-sweeps, prohibition for minors to ascend chimneys, requirement of certificates for master chimney-sweepers, and general regulations.—3 & 4 *Vict.* c. 85; 27 & 28 *Vict.* c. 37; consolidated with amendments by the Chimney Sweepers' Act, 1875, 38 & 39 *Vict.* c. 70.

China Marriage Act, 31 & 32 Vict. c. 61.

China trade. See 3 & 4 Wm. IV. c. 93; amended by 3 & 4 Vict. c. 56; 6 & 7 Vict. c. 80; and 22 & 23 Vict. c. 9.

Chinese Passengers' Act, 18 & 19 Vict. c. 104.

Chip, Cheap, Chipping, signify the place to be a market town, as Chippingham, Chipping-Norton, Chipping-Wicomb.—*Blount.*

Chippingavel, or **Cheapingavel,** toll for buying and selling.

Chirchgemot, Chirgemot, Kirmote, a synod, a meeting in a church or vestry.—*Blount.*

Chirograph [fr. χείρ, a hand, and γράφω, Gk., to write], a deed or other public instrument in writing, which anciently was attested by the subscription and crosses of witnesses: afterwards, to prevent frauds and concealment, people made their deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies they drew the capital letters of the alphabet, and then tallied or cut asunder, in an *indented* manner, the sheet or skin of parchment; which, being delivered to the two parties concerned, were proved authentic by matching with and answering one another. Deeds thus made were denominated *syngrapha* by the canonists, and with us *chirographa*, or handwritings. Chirograph was also used for a fine, the manner of engrossing which and cutting the parchment into two pieces was

observed in the chirographer's office of the Court of Common Pleas until those assurances by matter of record were abolished by the 3 & 4 Wm. IV. c. 74.—2 *Bl. Com.* 296; 2 *Inst.* 468; *Kenn. Antiq.* 177; *Mon. Ang.*, t. 2, p. 94.

Chirographa, writings emanating from a single party, the debtor.—*Civil Law.*

Chirographer, an officer of the Common Pleas, who kept the fines. Abolished.

Chirographum apud debitorem repertum præsumitur solutum.—(A deed found with the debtor is presumed to be paid.)

Chirurgeon [fr. χειρουργός, Gk.], the ancient denomination of a surgeon.

Chivalry, Court of, anciently held as a court of honour merely, before the Earl-Marshal, and as a criminal court before the Lord High Constable, jointly with the Earl-Marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armour, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record.—3 *Bl. Com.* 68, and 4 *Br. & Had. Com.* 360 *n.*

Chivalry, Guardian in. See TENURE.

Chloroform, administering. It is a felony for any person to administer or attempt to administer chloroform, or other stupefying drug, with intent to enable himself or another to commit, or to assist another in the commission of, any indictable offence.—24 & 25 *Vict.* c. 100, s. 22.

Choke, Attempt to. See 24 & 25 Vict. c. 100, s. 21.

Choky, Chokee, a chair, seat, guard, watch. The station of a guard or watchman. A place where an officer is stationed to receive tolls and customs.—*Indian.*

Cholera Act, 2 Wm. IV. c. 10, continued by 3 & 4 Wm. IV. c. 75. It has expired, and has not been revived; but s. 134 of the Public Health Act, 1875, gives power to the Local Government Board to make regulations for the prevention of 'any formidable epidemic disease.'

Chop-church [*ecclesiarum permutatio*, Lat.], changing benefices.—9 *Hen. VI.* c. 95.

Choral. In ancient times a person admitted to sit and serve God in the choir.

Chorepiscopi, bishops of the country in the early times of the church.

Chose [Fr., a thing]; it is used in divers senses, of which the four following are the most important.

(1) *Chose local,* a thing annexed to a place, as a mill, etc.

(2) *Chose transitory,* that which is movable, and may be taken away, or carried from place to place.

(3) *Chose in action,* otherwise called *chose in suspense,* a thing of which a man has not the possession or actual enjoyment, but has a right to demand by action or other proceeding, as a debt, bond, etc. A well-known rule of the Common Law was, that no possibility, right, title, or thing in action, can be granted to third parties, for it was thought that a different rule would be the occasion of multiplying litigation: as it would in effect be transferring a lawsuit to a mere stranger. At law, therefore, with the exception of negotiable instruments, bills of exchange, etc., an *interesse termini,* and some few other securities, this until lately continued to be the general rule, unless the debtor assented to the transfer; if he assented then the right of the assignee was complete at law, so that he might maintain an action against the debtor, upon the implied promise to pay him the debt, which results from such assent.

Now, however, by the Jud. Act, 1873, s. 25 (6), any absolute assignment by writing under the hand of the assignor of any debt, or other legal chose in action, of which express notice has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt, etc., is effectual in law to pass the legal right in such debt, etc., from the date of such notice, and all remedies for the same: subject to certain provisions contained in the section. See DEBT.

Courts of Equity have heretofore been in use to give effect to assignments of trusts, and possibilities of trusts, and contingent interests, whether they were in real or personal estates, as well as to assignments of *choses in action,* such equitable transfer being in the nature of an agreement, of which the Court directed the performance.—*Co. Litt.* 213 *a*; 2 *Bl. Com.* 442; 2 *Saunderson Uses,* 40; 2 *Story's Eq. Jurisp.* 278.

(4) *Choses in possession,* where a person has not only the right to enjoy but also the actual enjoyment of the thing.

Chout, a fourth, a fourth part of sums litigated; **Mahratta chout,** a fourth of the revenues exacted as tribute by the Mahrattas.—*Indian.*

Chrematistics [fr. χρῆμα, Gk.], the science of wealth.

Chrismatis denarii [fr. κρῖσμα Gk.], chrisom pence, paid to the diocesan or his suffragan by the parochial clergy about Easter.

It is otherwise called *quadragesimals*, or *paschals*, or *Easter-pence*. Obsolete.

Christian name, the name given at the font distinct from the surname. It has been said from the bench, that a Christian name may consist of a single letter.

Christianity. See APOSTACY, BLASPHEMY.

Christmas-day, a festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ. It is one of the usual quarter-days for the payment of rent and salaries; it is also a day on which the offices of the Supreme Court are closed (R. S. C. 1883, Ord. LXIII., Rule 6), and it is not reckoned in the computation of time where less than 6 days is limited for doing anything by a Rule of the Supreme Court (Ord. LXIV., Rule 2). With respect to this, and also to the closing of public-houses, and the payment of bills of exchange, it stands in the same position as Good Friday.

Church. The Church of England is a distinct branch of Christ's Church, and is also an institution of the State (see the first clause of Magna Charta), of which the Sovereign is the supreme head by Act of Parliament (26 Hen. VIII. c. 1), but in what sense is not agreed. The Sovereign must be a member of the Church, and every subject is in theory a member. The standard of doctrine and practice is settled by the Act of Uniformity, 14 Ch. II. c. 4, but the State has in various ways acknowledged the existence of non-conforming bodies. See CLERGY, DISSENTERS.—Consult *Cripps' Law of the Church and Clergy; Phillimore's Ecclesiastical Law.*

Church-building Acts. For the purpose of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people, the following statutes have been passed: 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; 7 & 8 Geo. IV. c. 72; 1 & 2 Wm. IV. c. 38; 2 & 3 Wm. IV. c. 61; 7 Wm. IV. & 1 Vict. c. 75; 1 & 2 Vict. cc. 106, 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 4 & 5 Vict. c. 38; 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 56; 8 & 9 Vict. c. 70; 9 & 10 Vict. cc. 68, 88; 11 & 12 Vict. cc. 37, 71; 14 & 15 Vict. c. 97; 17 & 18 Vict. cc. 14, 32; 18 & 19 Vict. c. 127; 35 & 36 Vict. c. 49; and 36 & 37 Vict. c. 50. In the year 1856 the powers of the Church Building Commissioners were, by the 19 & 20 Vict. c. 55, transferred to the Ecclesiastical Commissioners, a body incorporated by 6 & 7 Wm. IV. c. 77. See ECCLESIASTICAL COMMISSIONERS.

Church Discipline Act, 3 & 4 Vict. c. 86 (repealing 1 Hen. VII. c. 4), under which any clerk in holy orders 'charged with offence against the laws ecclesiastical or concerning whom there may exist scandal or offence against the said laws' (whether concerning doctrine, ritual, or moral misconduct) may be proceeded against first by inquiry before Commissioners nominated by the bishop of the diocese in which the offence is committed, and then, if the Commissioners report that there is a *primâ facie* case against him, by inquiry before the bishop with assessors, with an ultimate appeal to the Judicial Committee of the Privy Council.

Church Patronage (Scotland) Act, 1874, 37 & 38 Vict. c. 82.

Churchesset [fr. *churcheset, cirieseat*, Sax.], corn paid to the church. Fleta says, it signifies a certain measure of wheat, which, in times past, every man, on St. Martin's day, gave to holy church, as well in the times of the Britons as of the English; yet many great persons, after the coming of the Romans, gave their contributions according to the ancient law of Moses, in the name of first fruits; as in the writ of King Canutus sent to the Pope is particularly contained, in which they call it *churchsed.*—*Seld. Hist. Tithes*, 216.

Church Estate Commissioners, a committee of the ecclesiastical commissioners. See 13 & 14 Vict. c. 94, ss. 1, 3.

Church-rates, tributes, by which the expenses of the church are to be defrayed; made by the parishioners at large, that is, by the majority of those present at a vestry summoned for that purpose by the Churchwardens; and when made were recoverable in the Ecclesiastical Court, or, if the arrears did not exceed 10*l.* and no question were raised as to the legal liability, before two justices of the peace.—4 & 5 *Vict.* c. 36; 12 & 13 *Vict.* c. 14, s. 9. See *Prid. Churchwardens' Guide.* Compulsory church-rates were abolished by 31 & 32 Vict. c. 109.

Church-scot, customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

Church-wardens, anciently styled *Church Reeves or Ecclesiæ Guardiani*, the guardians or keepers of the Church, and representatives of the body of the parish; but though in some sort ecclesiastical officers, they are always lay persons. They are a *quasi* corporation (*Smith* v. *Adkins*, 8 *M. & W.* 362). They are sometimes appointed by the minister, sometimes by the parish in vestry assembled, sometimes by both together, sometimes one by the minister, and another by the parishioners, as custom directs. But where there is no

custom, it is said the election must be according to the canons, that they shall be chosen by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, then the minister is to choose one and the parishioners another. They are to be chosen yearly in Easter-week, and are generally two in number; are obliged when chosen to serve, and are sworn to execute the office faithfully. Several persons are, however, exempted from the office, viz., peers of the realm, members of parliament, sheriffs, acting justices of the peace, clergymen, Roman Catholic clergymen, solicitors, practising physicians and surgeons in London, practising apothecaries, officers in the army, navy, or marines, though on half-pay, registrars of births, etc., officers of the excise or customs or post-office, and persons living out of the parish unless they occupy a house of trade there (*Steer's P. L.* 84). One of their chief duties is the care and management of the goods belonging to the church, such as the organ, bells, Bible, and parish books. It is also part of their office, unless other persons are appointed by the ordinary for that purpose, to have the care of the benefice during its vacancy, or while it is under sequestration for the debts of the incumbent. They are moreover required to see to the reparation of the church, and to make such order relative to seats in the church and chancel, not appropriated to particular purposes, as the ordinary (who has in general the sole power in this matter) shall direct, and in practice, the arrangements are usually made by the church-wardens, even without any special direction from the ordinary. It is incident also to their office to enforce proper and orderly behaviour during divine service; and Canon 17 directs that they or the anestmen or their assistants, 'shall not suffer any idle persons to abide either in the churchyard or church porch during divine service, or preaching; but shall cause them either to come in, or depart.' If church-wardens waste the goods of the church, or be guilty of other misbehaviour, they are liable to removal; at the end of the year they are bound to render an account of all their receipts and disbursements.—*Prid. Churchwardens' Guide; Steer's Parish Law.*

Churchyard is the freehold of the rector or vicar. See 2 *Step. Com.* As to consecration, see 'Consecration of Churchyards Acts,' 1867, & 1868.

Churle [fr. *ceorl*, Sax.], a tenant at will, of free condition, who held lands of the Thanes, on payment of rents and services: of two sorts; one who hired the lord's tenementary estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were called his *sockmen* or *ploughmen.*—*Spelm.*

Ciltre, corruptly *Siltre*, Chiltern.

Cinque Port [*quinque portus*, Lat.] the five most important havens in the kingdom, lying on the coast towards France, viz., Dover, Sandwich, Romney, Hastings, and Hythe; to which Winchelsea and Rye have since been added. The 18 & 19 Vict. c. 48 (amended by 20 & 21 Vict. c. 1), abolishes all jurisdiction and authority of the Lord Warden of the Cinque Ports and Constables of Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings at Law or in Equity; and see 27 & 28 Vict. c. 80, and 32 & 33 Vict. c. 53.

Circada, a tribute anciently paid to the bishop or archbishop for visiting churches.—*Du Fresne.*

Circar, head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. See SIRCAR.

Circuits (seven, eight formerly), certain divisions of England and Wales, appointed for the judges to go formerly twice a year, in the respective vacations after Hilary and Trinity terms, but more recently oftener, and at no precisely fixed periods, to administer justice in the several counties. Two judges went on each of the circuits until 1884, both of them attending at each circuit town, when by a new scheme set on foot by the 'Circuits Order' of that year (see *Chit. Stat.*, vol. vii., p. 801) it was arranged that at the majority of the circuit towns one judge only should attend, with the power, however, under Rule 9 of the Order, of requesting one of the judges in London to proceed to any place on circuit in his aid 'in order to enable the judges, as far as possible, to leave no cause untried at any place or any circuit.' The following were the circuits and assize towns as they stood altered by Order in Council made pursuant to 26 & 27 Vict. c. 122:—

(1) *Northern Circuit:* Appleby, Carlisle, Newcastle, Durham, Lancaster, Manchester, and Liverpool.

(2) *Home Circuit:* Hertford, Chelmsford, Maidstone, Lewes, Kingston, *in spring*; Guildford or Croydon, *in summer.*

(3) *Western Circuit:* Winchester, Salisbury, *in summer*; Devizes, *in spring*; Dorchester, Exeter, Bodmin, Taunton, *in spring*; Wells, *in summer*; Bristol.

(4) *Oxford Circuit:* Reading, *in spring*; Abingdon, *in summer.* Oxford, Worcester,

Stafford, Shrewsbury, Hereford, Monmouth, Gloucester.

(5) *Midland Circuit:* Warwick, Derby, Nottingham, Lincoln, York, and Leeds.

(6) *Norfolk Circuit:* Leicester, Northampton, Oakham, Aylesbury, Bedford, Huntingdon, Cambridge, Bury St. Edmunds, *in summer*; Ipswich, *in spring*; Norwich.

(7) *North Wales Circuit:* Newtown, Dolgelly, *in summer*; Welshpool, Bala, *in spring*; Carnarvon, Beaumaris, Ruthin, Mold, Chester.

(8) *South Wales Circuit:* Swansea, *in spring*; Cardiff, *in summer*. Carmarthen, Haverfordwest, Cardigan, Brecon, Presteign, Chester.

By the Judicature Act, 1875, s. 22, it is provided that by Order in Council regulations may be made for the circuits, altering their arrangement and discontinuing any assizes, and especially transferring the business of the Surrey Assizes to London. The following are the circuits as they stand altered by Order in Council of the 5th of February, 1876, made pursuant to the Above Act:—

(1) *Northern Circuit:* Counties of Westmoreland, Cumberland, and Lancaster.

(2) *North-Eastern Circuit:* Counties of Northumberland, Durham, and York, and counties of the town of Newcastle-upon-Tyne, and city of York.

(3) *Midland Circuit:* Counties of Lincoln, Nottingham, Derby, Warwick, Leicester, Northampton, Rutland, Buckingham, and Bedford; the counties of the city of Lincoln and town of Nottingham; the borough of Leicester.

(4) *South-Eastern Circuit:* Counties of Norfolk, Suffolk, Huntingdon, Cambridge, Hertford, Essex, Kent, and Sussex; and county of the city of Norfolk.

(5) *Oxford Circuit:* Counties of Berks, Oxford, Worcester, Stafford, Salop, Hereford, Monmouth, Gloucester, and counties of the cities of Worcester and Gloucester.

(6) *Western Circuit:* Counties of Southampton, Wilts, Dorset, Devon, Cornwall, Somerset; and counties of the cities of Exeter and Bristol.

(7) *North and South Wales Circuit:* (*a*) North Wales Division—Counties of Montgomery, Merioneth, Carnarvon, Anglesea, Denbigh, Flint, and Chester. (*b*) South Wales Division—Counties of Glamorgan, Carmarthen, Pembroke, Cardigan, Brecknock, and Radnor; and counties of the borough of Carmarthen, and town of Haverfordwest.

The places, and also, as far as may be, the days for holding Assizes are fixed, and various other regulations as to Circuits made, by the Circuits Order, 1884, above referred to.

Circuity of action, a longer course than requisite of proceeding to recover a thing sued for.—*Termes de la Ley.* Wherever the rights of the litigant parties were such that the defendant would be entitled to recover back from the plaintiff the same sum which the plantiff sought to recover, the defendant might plead the facts which constitute such right as a defence, in order to avoid circuity of action.—*Bullen & Leake on Pleading*, 3rd ed., 558. Now all counter-claims may be raised in the defence to an action. See Jud. Act, 1873, s. 24 (3). See COUNTER-CLAIM.

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oriatur. 5 Co. 31. —(Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one law-suit arise out of another.) On this maxim depends the law of set-off.—2 *Geo. II.* c. 22, s. 13; 8 *Geo. II.* c. 24, s. 5.

Circulating medium, more comprehensive than the term money, as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

Circumduction, a judicial declaration that the time allowed to either party for leading proof has elapsed.—*Scotch Law.*

Circumspecte agatis (*that you act cautiously*), the statute 13 Edw. I. st. 4, A.D. 1285, relating to prohibitions. 2 *Inst.* 187; 2 *Reeves* 215.

Circumstantial evidence, presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact which is inferred from them had also existed; and that a presumption can only be relied on until the contrary is actually proved. Circumstantial evidence has, in some instances, undoubtedly been found to produce a much stronger assurance of a prisoner's guilt than could have been produced by more direct and positive testimony. As a general principle, however, it is true that positive evidence of a fact from credible eye-witnesses is the most satisfactory that can be produced; and the universal feeling of mankind leans to this species of evidence in preference to that which is merely circumstantial. If positive evidence of a fact can be produced, circumstantial evidence ought not to be trusted. Chief Baron Gilbert, therefore, considered it a higher species of proof. He says, 'When the fact itself cannot be proved, that which comes nearest to the

proof of the fact is the proof of the circumstances which necessarily or usually attend such facts, and which are called presumptions and not proofs, for they stand instead of the proofs of the fact till the contrary be proved.' —1 *Phil. Evid.* c. 7, s. 2. See *Wills on Circumstantial Evidence*, *Best on Evidence.*

Circumstantibus, tales de (*so many of the bystanders*). In civil and criminal trials, where by reason of the default of the jury, or of challenge, there is not a sufficient number of the jurors impannelled, the judge may direct the sheriff to add to the pannel the names of a sufficient number of persons qualified to act as jurymen who may be present or can be found, who are called *tales de circumstantibus.* —6 *Geo. IV.* c. 50, s. 37.

Circumvention, fraud or deceit.—*Scotch Law.*

Ciric-Bryce, any violation of the privileges of a church.—*Anc. Inst. Eng.*

Ciric Sceat [*punicitiæ seminum*], churchscot, or shot, an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.—*Anc. Hist. Eng.*

Citatio ad reassumendam causam, a citation which issued when a party died pending a suit, against his heir, to revive the cause.

Citatio est de jure naturali. (A summons is by natural right.)

Citation, a summons to appear, applied particularly to process in the spiritual, probate, and matrimonial courts; a reference to authorities in support of an argument.

See, e.g., the Legitimacy Declaration Act, 1858, 21 & 22 Vict. c. 93, s. 7.

Citationes non concedantur priusquam exprimitur supra quâ re fieri debet citatio.—12 Co. 44.—(Summonses should not be granted, before that it is explained for what cause a summons ought to issue.)

Citizen, a freeman, or one who has resided and kept a family in the City.—*Roll. Rep.* 138, 149.

City [fr. *cité*, Fr.], a town corporate, which has usually a bishop and cathedral church. It is called *civitas*, because it is governed by justice and order of magistracy; *oppidum* for that it contains a great number of inhabitants; and *urbs*, because it is in due form begirt about with walls.—*Cowel.*

City of London. The City of London court, was, prior to the 30 & 31 Vict. c. 142, s. 35, known as the 'Sheriffs Court of the City of London.' Its procedure was, theretofore, regulated by Acts and Rules peculiar to itself: but by the above enactment, reenacted by s. 185 of the County Courts Act, 1888, it becomes to all intents and purposes a County Court. As to sittings of the High Court of Justice in the City of London, see *Royal Courts of Justice.*

Civil, stands for the opposite of Criminal, of ecclesiastical, of military, or of political. —1 *Mill's Log.*

Civil Bill Court, a tribunal in Ireland with a jurisdiction analogous to that of County Courts in England. The judge of it is also Chairman of Quarter Sessions (where the jurisdiction is more extensive than in England), and performs the duty of revising barrister. The procedure of the C vil Bill Courts is regulated by 27 & 28 Vict. c. 99; 28 & 29 Vict. c. 1; and 37 & 38 Vict. c. 66.

Civil commotion, an insurrection of the people for general purposes, though it may not amount to rebellion, where there is an usurped power.

Civil death. A man is said to be civilly dead when he has been attainted of treason or felony, and, in former times, when he abjured the realm or went into a monastery. The 33 and 34 Vict. c. 23, provides that after the passing of that act no confession, verdict, inquest, conviction, or judgment of or for any treason or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat.

Civil Law, that rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of municipal law.

The term 'civil law' is now chiefly applied to that which the old Romans compiled from the laws of nature and nations.

The 'Roman Law' and the 'Civil Law' are convertible phrases, meaning the same system of jurisprudence; it is now frequently denominated 'the Roman Civil Law.'

The collections of Roman Civil Law, before its reformation in the 6th century of the Christian era by the eastern Emperor Justinian, were the following:—

(1) *Leges Regiæ.* These laws were for the most part promulgated by Romulus, Numa Pompilius, and Servius Tullius. To Romulus are ascribed the formation of a constitutional government, and the imposition of a fine, instead of death, for crimes; Numa Pompilius composed the laws relating to religion and divine worship, and abated the rigour of subsisting laws; and Servius Tullius, the sixth king, enacted many wise and good laws to maintain the cause of the poor, and to stop the oppression of the rich. He also revived many of the obsolete laws of Romulus and Numa Pompilius.

Sextus Publius Papyrius, Pontifex Maximus, in the reign of Tarquinius Superbus, collected the royal laws, which collection is

known by the name of *Jus Civile Papyrianum*. Legislation under the regal dynasty must have been extremely simple; very few relics of it, however, have been preserved, and among them it is almost impossible to distinguish the genuine from the spurious. The *Leges Regiæ* have been edited by Lipsius, and other men of learning; and of the supposed laws of Romulus, a separate collection was published by Balduinus.

(2) *Leges Decemvirales*, or the Laws of the Twelve Tables. The uncertain state of the law, in the Republican era, and the uneasiness occasioned by the continued quarrels of the patricians and plebeians, rendered systematic legislation indispensable, so after great opposition on the part of the patricians, a law was proposed by Caius Terentelius Horsa (B.C. 460, A.U.C. 293), to appoint a commission to draw up a body of laws; and (in B.C. 452, A.U.C. 301) three commissioners are said to have been chosen by the patricians to visit Greece, in order to collect materials for a code; upon their return, after an absence of three years, ten commissioners, including the three, were appointed, with the title *De Legibus Scribendis*, whose duty it was to revise, digest, and enforce the new laws. All other magisterial offices were then suspended, and these ten commissioners, or *Decemviri*, became invested with the sole management of state affairs. The Ten Tables they drew up, having been approved by the senate and comitia, were engraved on metal, and suspended in the Comitium, and all parties were so well satisfied with the result of the first year's administration of the *Decemviri*, that it was resolved to continue the same sort of government for another year—new members were elected to sit upon this commission, the only one re-elected being Appius Claudius. In the former year the whole ten had been taken from the patrician class, but this year three of them were plebeians. The new laws drawn up by this new commission having been duly approved, and reduced to writing on two supplementary tables, made up the total number of Twelve Tables, by which name they were subsequently known, and under which they became famous. To judge from the fragments of these laws which have survived, they were very epigrammatic and positive in their nature; they formed the catechism of education for the Roman youth; indeed, all well-educated persons were expected to know them by heart. Cicero, in his book *De Oratore*, describes the law of the Twelve Tables as a summary of all that is excellent in the libraries of the philosophers.

The Laws of the Twelve Tables were illustrated by the commentaries of several ancient lawyers, especially Antistius, Labeo, and Caius: the fragments of these laws have been collected and explained by many of the moderns, by Balduinus, Rœvardus, Marcilius Augustinus, Gravina, Funccius Bouchaud, Gothofredus, and others.

(3) *Jus Civile Flaviadum*, and its subsequent edition, *Jus Civile Ælianum*. This collection consists of the forms of pleadings, called *Actiones Juris*, adopted in all proceedings and acts of court. It was compiled about 440 A.U.C. or B.C. 312, by Appius Claudius Cæcus, who, being blind, was obliged to employ an amanuensis, Gaius Flavius, hence the title of the collection.

The Flavian collection being the first, was naturally imperfect; in consequence of which *Sextus Ælius Pætus*, surnamed Catus, published about 553 A.U.C. or 200 B.C. a supplement to it, again promulgating the new formulæ subsequently introduced, together with an interpretation of the laws of the Twelve Tables, whence it is called Tripartita, because the first part contained the laws of the Twelve Tables; the second, their interpretation; and the third, the forms of pleadings.

(4) *Edictum Perpetuum Juliani*. Ofilius, in Julius Cæsar's time, made a compilation of the Prætor's Edicts, which was made perpetual by Salvius Julianus, at the command of the Emperor Adrian, many years later.

(5) The Codes of *Gregorius Hermogenius*, and *Theodosius* the Younger.

Gregorius, or Gregorianus, appears to have collected the imperial constitutions belonging to the intermediate reigns from Adrian to Constantine the Great.

Hermogenianus, or Hermogenes, is supposed to have formed a supplementary collection, and the remaining fragments consist entirely of the constitutions of Diocletian and Maximin.

The compilations are to be esteemed as the works of two private lawyers; the fragments which Cujacius (the most celebrated of all the interpreters of the Roman law) has placed at the end of the Theodosian Code are all the remains of these two productions.

The Theodosian Code collects the constitutions enacted from the time of Constantine the Great (A.D. 312) up to A.D. 438. This work is of considerable magnitude, and is still extant, it is supposed, in an imperfect state, from three hundred and twenty constitutions being found in Justinian's Code, which are sought in vain in that which remains to us of the Theodosian. It is probable that this book, having been compiled by imperial command, had the stamp of authority. There are added to it the newer constitutions of

Theodosius, Valentinianus III., Marcianus, Majorianus, Severus, and Anthemius. Theodosius the Younger also made another code divided into seventeen books, called the Theodosian Code, which, however, was never completed.

This Code was followed, until suppressed by Justinian's order, and is not unworthy of the attention of the learned. The editor and expounder of the Theodosian Code is Jacobus Gothofredus, or Godefroy, who is the first and most illustrious of modern civilians. He bestowed his assiduous labour upon this Code for thirty years, and left his great commentary to be completed by Antoine Marville, who published it at Lyons in 1665. It is an immense storehouse of judicial and historical knowledge. Ritter published another edition of it some seventy years afterwards.

Such were the several collections of laws before Justinian's reign. Those made by that emperor's order, which compose the body of the Civil Law in its present state, will now be referred to.

The Imperial, or Civil Law, as consolidated by Justinian, consists of four parts :—

(1) The Institutions, in which the elements of jurisprudence are disposed in a didactic form, its chief and leading objects are explained in a regular series, and the whole arranged in such a way as neither to oppress the student with a multitude and a variety of matter, nor yet to leave him destitute of any necessary helps to facilitate his progress in legal knowledge.

These Institutes were composed chiefly from Gaius, and especially from his *Aureorum* (of important matters), in order to teach the rudiments of law, and the great principles of equity, and were divided so as to form an elementary introduction to legal study. This division is in four books, each book into several titles, and every title into several parts; the first (not numbered) is called *Principium*, which is the beginning of the title; and those which follow paragraphs. The Institutes are quoted with the letter I. or *Inst.*; thus § *si adversus*, 12 *I. De Nuptiis*, is nothing more than twelve paragraphs of the title *De Nuptiis*, which, on reference to the index, will be found to be the tenth of the first book; this is usually now cited I. i. 10, 12.

(2) The Digest or Pandects, which are rules founded on the pure spirit of jurisprudence. The words 'Digest' and 'Pandect' are not synonymous; the former means an abstract of the opinions of lawyers upon certain points of law; the latter, from πᾶν, all, and δέχομαι, to receive, signifies a compendium of the law.

Tribonian received the imperial command De Conceptione Digestorum, A.D. 530, with directions to choose his colleagues; and seventeen were ultimately appointed with absolute power to make such use of preceding works as should appear most conducive to the object in view. Tribonian's library afforded forty of the works of the most renowned civilians, which, with above two thousand other treatises, containing three millions of lines, were abridged into a hundred and fifty thousand; the work was completed in the incredibly short space of three years, and published on the 16th December, A.D. 533, a month after the appearance of the Institutes: its publication having been delayed a month, in order that the elementary work might precede it. —1 *Colqu. R. C. L.* 66.

The Digest is compiled from the decisions, conjectures, questions, and disputes of the most famous lawyers who had existed up to that time; and thus the substance of many thousand treatises is compressed into one work, which superseded all the then existing Digests, and rendered unnecessary references, which had become not only laborious, but almost impossible. The Pandects were divided into fifty books, each book containing several titles divided into laws, and the laws generally into several parts or paragraphs.

Besides this distribution of the Digest into fifty books, it was divided into seven parts, but the reason that induced the emperor to make this division is not known. Some supposed it was done in order to separate the different matters, and include all that related to one subject in one part, consisting of several books. Others attribute it to the superstitious respect of the ancients for the number seven, as the most perfect. This book is variously quoted by the letters D. P. or π. or II, and ff, which latter is supposed to be a corruption of the D with a stroke through the middle, or perhaps a corruption of the Greek π. The most ancient method of quotation is by mentioning the initial words of the law and paragraph with those of the book or title, which necessitates a reference to the general index, with which all modern editions are not furnished; thus, § *sin. ver. l. quæsitum est D. de Peculio.* The second by citing the initial words and numbers of the law or paragraph with the initial words of the book or title; thus, § *sin. ver.* 3 *l. quæsitum est* 30 *D. de Peculio.* The third by mentioning the number of the law or §, with the initial words of the book or title; thus, § 3 *l.* 30. *D. de Peculio*, which is the method adopted by Heineccius. The modern mode, which avoids all reference to the index, is thus, D 15, 1, 30, 3. The first paragraph

is not numbered, and is usually quoted by the abbreviation *in pr.* (*in principio*); in like manner the last paragraph is sometimes quoted by the words *in fin.* (*fine*), or, § *ult.* (*paragraphus ultimus*).—1 *Colq. R. C. L.* 68.

(3) The Code. Within six years after the publication of the Code, it was suppressed as imperfect, and replaced by a new edition entitled the *Codex Repetitæ Prælectionis*, containing 200 of Justinian's own laws, and the 50 decisions on the most obscure and debatable points of jurisprudence. The Code was divided into twelve books, each book into titles, and each title into laws, each law containing several parts. The first is called Principium, being the beginning of the law, and those which follow, paragraphs. The letter C is the invariable mark of the Codex, which may be variously quoted by the initial words of the paragraph, law, book, or title. The nine first books were emphatically called the Codex; the latter three (tres libri) contained the Jus Publicum, which had been separated from the whole at an early period, as of less practical utility, and often bound up with other works.

(4) The Novels, or New Constitutions, which are explanatory of the Code. After Justinian's decease, some parts of his Novels, to the number of 168, were collected and reduced into one volume, together with thirteen of the Greek edicts; which, together, make up the fourth and last division of the *Corpus Juris Civilis*. The greatest part of these Novels was composed in Greek, owing to the seat of the empire being then at Constantinople, where few or none spoke Latin in perfection; notwithstanding which some of them were published in Latin, and have been noticed by Antonius Augustinus. There are four Latin translations of the Novels. The Novels are quoted by their respective numbers. They are directed either to magistrates, bishops, or citizens of Constantinople, and were of equal force and authority for those private persons to whom they were addressed, and who were enjoined to have them proclaimed and to see them executed according to their form and tenor.

By the Civil Law was governed the greater part of B itain, for the space of about 360 years (from Claudius to Honorius), during which period some of the greatest masters of that law, whose opinions appeared collected in the body of it—as Papinian, Paulus, and Ulpian—sat in the seat of judgment in this island. After the declension of the Roman empire, the Saxon, Danish, and Norman laws superseded a great portion of the Roman law; but not very long afterwards it began again to manifest its influence, and entered largely into the composition of the Common Law. Under the influence of the foreign ecclesiastics, who, pouring into this country after the Conquest, long monopolized the administration of the law, great encouragement was given to the adoption of the Civil Law, till the nobility and laity became so jealous of its prosperity, and alarmed at its progress, that a long and fierce feud ensued between the laity, stoutly struggling for the Common Law, and the clergy for the Civil and Canon Law, to which, in the end, they entirely betook themselves; and, withdrawing from the temporal courts, left them to the superintendence of the common lawyers; still, however, keeping an ecclesiastic at the head of affairs, in the high station of chancellor, who, as his office gradually increased in influence and power, was enabled, in time, to introduce much of the spirit of the Civil Law into the administration of Municipal Law, especially in the Courts of Equity.

'The whole body of the Civil Law' (remarks Chancellor Kent, 1 *Comm.* 548) 'will excite never-failing curiosity, and receive the homage of scholars, as a singular monument of wisdom. It fills such a large space in the eye of human reason; it regulates so many interests of man as a social and civilised being; it embodies so much thought, reflection, experience, and labour; it leads us so far into the recesses of antiquity, and it has stood so long against the waves and weathers of time, that it is impossible, while engaged in the contemplation of the system, not to be struck with some portion of the awe and veneration which are felt in the midst of the solitudes of a majestic ruin.'

Civil List, an annual sum granted by parliament at the commencement of each reign, for the expenses of the royal household and establishment, as distinguished from the general exigencies of the state; it is the provision made for the Crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. This arrangement has prevailed from the time of the Revolution downwards, though the amount fixed for the civil list has been subject in different reigns to considerable variation. At the commencement of the present reign a civil list was settled upon Her Majesty for life, to the amount of 385,000*l.* per annum, payable quarterly, out of the consolidated fund, of which the sum of 60,000*l.* is assigned for Her Majesty's privy purse; in return for which grant it was provided, that the hereditary revenues of the Crown (with the exception of the hereditary duties of excise on beer, ale, and cider, which were to be discontinued

during the present reign) should, during the present Queen's life, be carried to and form part of the consolidated fund. The civil list is properly the whole of the sovereign's revenue in her own distinct capacity; the rest being rather the revenue of the public or its creditors, though collected and distributed again in the name and by the officers of the Crown. The civil list, therefore, now stands in the same place as the hereditary income did formerly; but with this great difference, that it is not chargeable, as the hereditary income was, with the general and public expenses of government.

By the Civil List Act, passed at the Queen's accession, 1 & 2 Vict. c. 2, Her Majesty is also empowered to grant pensions to the amount of 1200*l.* per annum, chargeable on her civil list revenues, which are intended for the remuneration of those who have just claims on the royal beneficence, or by their services or discoveries have merited the gratitude of their country. See CROWN.

Civil Procedure Acts Repeal Acts, 1879, 1881, and 1883, 42 & 43 Vict. c. 59, 44 & 45 Vict. c. 59, and 46 & 47 Vict. c. 49, repealing amongst other enactments those which had been superseded by the Rules of the Supreme Court under the Judicature Acts; the act of 1883 in particular repealing all but very small portions of the Common Law and Chancery Procedure Acts in view of the issue of the Consolidated 'Rules of the Supreme Court, 1883.'

Civil remedy, one open to a private person as opposed to a criminal prosecution.

Civil service. This term properly includes all functions under the Crown except military and naval functions. The principal Civil Service Offices are the Treasury, War Office, Home Office, Inland Revenue Office, and Post Office. As to pensions, see *Superannuation Acts.*

Civilian, one that professes the knowledge of the Civil Law.

Civilization, a law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary.—*Harris.*

Civiliter mortuus (*civilly defunct*, i.e., *dead in law*). See CIVIL DEATH.

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs verò complectitur ædificia. Co. Litt. 409.—(A city and a town differ in this, that the inhabitants are called the city, but town includes the buildings.)

Clades [fr. *clida, cleta, cleia,* fr. the Brit., *clie* and *clia,* Irish], a wattle or hurdle.—*Paroch. Antiq.* 575.

Claim [fr. *clamer,* Fr.; *clamo,* Lat., to call], a challenge of interest of anything which is in another's possession, or at least out of a man's own possession, as claim by charter, descent, etc.—*Plow.* 359 *a.*

Claim in equity. In simple cases, where there was not any great conflict as to facts, and a discovery from a defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the Court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings. This summary practice was created by orders 22nd April, 1850, which came into operation on the 22nd May following. By Order VIII., Rule 4, of Consolid. Ord. 1860, claims were abolished.

Claim of liberty, a suit or petition to the Queen in the Court of Exchequer, to have liberties and franchises confirmed there by the attorney-general.

Clam delinquentes magis puniuntur quam palam. 8 Co. 127.—(Those sinning secretly are punished more severely than those sinning openly.)

Clam vi aut precario, by force, stealth, or importunity.

Claim, Statement of. See STATEMENT OF CLAIM.

Clamea admittenda in itinere per attornatum, an ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person. —*Reg. Orig.* 19.

Clandestine mortgages. By 4 & 5 Wm. & Mary c. 16, A.D. 1692, it is enacted that if any person, having once mortgaged his lands for a valuable consideration, shall again mortgage the same lands, or any part thereof, to any person, the former mortgage being in force, and shall not discover in writing to the second mortgagee the first mortgage, such mortgagor so again mortgaging his lands shall have no relief or equity of redemption against the second mortgagee.

Clarendon (Constitutions of). At a great council held at Clarendon in Wiltshire, A.D. 1164, in the tenth year of the reign of Henry II., a code of laws was brought forward by the king, under the title of the ancient customs of the realm, and known as the famous 'Constitutions of Clarendon'; and as Becket had solemnly promised he would observe what were really such, the king procured the principal propositions in dispute to be enacted, and declared by the council under that denomination. Nothing will enable us to judge so well of the pretensions of the clergy as a perusal of these Constitutions.

They are contained in sixteen articles, ten of which were considered by the see of Rome as so hostile to the rights of the clergy, that Pope Alexander, in full consistory, passed a solemn condemnation on them; the other six he tolerated, not as good, but less evil.

These Constitutions were calculated to give a rational limitation to the secular and ecclesiastical judicature; and furnished a basis on which these separate jurisdictions might have been founded, without any inconvenience to the nation, or diminution of the temporal authority; and they were with that view confirmed, A.D. 1176, at a council held at Northampton.—1 *Reeves' Hist.* c. ii. 75—80.

Classiarius [fr. *classis*, Lat.], a seaman or soldier at sea.

Claud [Brit.], a ditch; *claudere*, to enclose, or turn open fields into enclosures.—*Paroch. Antiq.* 236.

Clause irritant. By this clause, in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the 'resolutive' clause such right becomes resolved and extinguished. *Bell's Scotch Law Dict.*

Clause resolutive. See last title.

Clause rolls [*rotuli clausi*, Lat.], contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower. See CLOSE ROLLS.

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæspeciatim dicta fuerunt. Lofft. 419. —(A general clause of reservation does not comprehend those things which may not be of the same kind with those which have been specially expressed.)

Clausula generalis non refertur ad expressa. 8 Co. 154.—(A general clause does not refer to things expressed.)

Clausula quæ abrogationem excludit ab initio non valet.—(A declaration which excludes rescission is inoperative from the first.) Consult *Bac. Max. R.* 19.

Clausula vel dispositio inutilis per præsumptionem remotam vel causam ex post facto non fulcitur. Bac. Max. Reg. 21.—(An unnecessary clause or disposition is not rendered valid by a remote presumption or a cause arising after the event.)

Lord Bacon explains *clausula vel dispositio inutilis*, when the acts or the words work or express no more than the law by intendment would have supplied; and such a clause or disposition is not supported by any subsequent matter which might give effect to the particular words or acts.

Clausulæ inconsuetæ semper inducunt suspicionem. 3 Co. 81.—(Unusual clauses always excite suspicion.)

Clausum fregit. See CLOSE.

Clausum paschiæ, the morrow of the *utas*, or eight days of Easter; the end of Easter; the Sunday after Easter-day.—2 *Inst.* 157.

Clausura heyæ, an enclosure of a hedge.

Claves insulæ, the keys of the Island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

Clavia, a club or mace.

Clavigeratus, a treasurer of a church.—*Mon. Angl.* t. 1, p. 184.

Clawa, a close or small measure of land.—*Mon. Angl.* t. 2, p. 250.

Clean hands are required from a plaintiff, i.e., he must be free from reproach in his conduct. But there is this limitation to the rule, that his conduct can only be excepted to in respect of the subject-matter of his claim: everything else is immaterial. The rule can be more frequently applied in Equity than at Common Law. See ILLEGALITY, CONTRACTS. *In pari delicto potior est conditio defendentis.*

Clear. In asserting an estate to be of any given 'clear' yearly rent, the parties should attend to the meaning of the word 'clear' in an agreement between buyer and seller, which is free of all outgoings, incumbrances, and extraordinary charges not according to the custom of the country, as tithes, poor-rates, etc., as these are natural charges on the tenant, but subject nevertheless to the land-tax and all other out-goings which, according to such custom, ought to be borne by the landlord.—*Sugd. V. & P.*, 14th ed., 222.

Clearance, a certificate that a ship has been examined and cleared at the custom-house.

Clear days. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively as well of the first day as the last.—1 *Chit. Arch. Pr.*

Clearing, among London bankers a method adopted by them for exchanging the drafts of each other's houses, and settling the difference. At fixed hours, each day, a clerk from each banker attends at the clearing-house bringing all the drafts on the other bankers which have been paid into his house during that day, and delivers to each of the other clerks the obligations he has against his house, receiving from each the obligations due from his own. Balances are struck at the end of the day, the clerk to the Clearing House making up the accounts between each bank. The balances are not paid to or received from the other bankers as formerly, but are settled with the Clearing House, which keeps an

account itself at the Bank of England. There is also a County Clearing House. Consult *McLeod on Banking*.

Clearing-house, the place where the operation termed clearing is carried on, situated in a corner of Post Office Court, in Lombard Street.

Clementines, the collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

Clement's Inn, an Inn of Chancery. See INNS OF CHANCERY.

Cler. fil. (*clerici filius*), the son of a clergyman.

Clergy [fr. *clergé*, Fr.; *clerus*, Lat.], the assembly or body of clerks or ecclesiastics set apart from the rest of the people or laity, to superintend the public worship of God, and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The clergy, in general, were formerly divided into (1) *regular*, who lived under certain rules, being of some religious order, and were called men of religion, or the religious; such as abbots, priors, monks, etc.; and (2) *secular*, that did not live under any certain rules of the religious orders, as bishops, deans, parsons, etc. Now, the term comprehends all persons in holy orders, and in ecclesiastical offices, viz., archbishops, bishops, deans and chapters, archdeacons, rural deans, parsons (either rectors or vicars), and curates, to which may be added parish clerks. The declaration of conformity to the church to be taken by clergy on entering on any curacy, benefice, etc., is now regulated by the 28 & 29 Vict. c. 122. The clergy are exempt from serving on juries; they are free from arrest while officiating (24 & 25 Vict. c. 100, s 36). They are restrained from farming more than eighty acres, except with the sanction of the bishop (1 & 2 Vict. c. 106, s. 28), and they cannot carry on any trade (s. 29). It is a misdemeanour to obstruct or assault them while in the exercise of their duties (24 & 25 Vict. c. 100, s. 36). The clergy of the Episcopalian Church in Scotland are admitted to officiate and hold benefices in England with the consent of the bishop of the diocese by 27 & 28 Vict. c. 94.

By 'The Clerical Disabilities Act, 1870,' the clergy, upon resigning their preferments, etc., are enabled to throw off the disabilities attaching to their clerical office by virtue of 41 Geo. III. c. 63, by which they are disqualified for sitting in the House of Commons; the Municipal Corporations Act, 1882, by which (s. 12) they are disqualified for being town councillors (though they may be *county* councillors, by s. 2 of the Local Government Act, 1888, and still be clergymen); and 3 & 4 Vict. c. 86, by which they may be proceeded against for offences against ecclesiastical law. See *Chitty's Statutes*, vol. i., tit. '*Church and Clergy*'; *Phillimore's Ecclesiastical Law*. See also BENEFIT OF CLERGY.

Clerical error, a mistake in copying.

Clerici non ponantur in officiis. Co. Litt. 96.—(Clergymen should not be placed in offices), i.e., in secular offices. See *Lofft*. 508.

Clerici, vel monachi, ne sæcularibus negotiis se immisceant. Ferrier's Rom. Hist. 117.—(Clergymen or monks should not mix themselves in secular matters.)

Clerico capto per statutum mercatorum, etc., a writ for the delivery of a clerk out of prison, who is imprisoned upon the breach of a statute-merchant.—*Reg. Orig.* 147.

Clerico convicto commisso gaolæ in defectu ordinarii deliberando, an ancient writ, that lay for the delivery to his ordinary, of a clerk convicted of felony where the ordinary did not challenge him, according to the privilege of clerks.—*Ibid.* 69.

Clerico infra sacros ordines constituto, non eligendo in officium, a writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.—*Ibid.* 143.

Clericum admittendum, a writ of execution directed not to the sheriff, but to the bishop or archbishop, and requiring him to admit and institute the clerk of the plaintiff.—3 *Bl. Com.* 413.

Clericus non connumeretur in duabus ecclesiis. 1 Rol. R.—(A clergyman should not be appointed to two churches.)

Clerk [fr. *cleric*, Sax.; *clericus*, Lat.), originally a learned man or man of letters, whence the term is appropriated to churchmen who were called clerks and now clergymen; the nobility and gentry being bred to the exercise of arms; and none left to cultivate the sciences but ecclesiastics. Where the canon law has full power, the word 'clerk' comprehends *sacerdotes*, *diaconi*, *subdiaconi*, *lectores*, *acolyti*, *exorcistæ*, and *ostiarii*. The word has been anciently used for a secular priest, in opposition to a religious or a regular.

Clerk of Affidavits in Chancery, an office abolished by 15 & 16 Vict. c. 87, s. 27.

Clerk of Arraigns, an assistant to the Clerk of Assize. His duties are in the Crown Court on circuit.

Clerk of Reports in Chancery, abolished by 15 & 16 Vict. c. 87, s. 27.

Clerk of the Crown in Chancery. See 37 & 38 Vict. c. 81.

Clerk of the Custodies, of lunatics and idiots, the office of, abolished. See 2 & 3

Wm. IV. c. 111; 3 & 4 Wm. IV. c. 84; and 5 & 6 Vict. c. 84, s. 10.

Clerk of Justices of the Peace, Clerk of Petty Sessions, Clerk of Special Sessions. The duties of these officers are, by the Justices Clerks Act, 1877, 40 & 41 Vict. c. 43, s. 5, performed by one salaried clerk, called in the act 'clerk of a petty sessional division.' Such clerk must, by s. 7, be either a barrister of not less than fourteen years' standing, or a solicitor, or have served for not less than seven years as a clerk to a magistrate or to a metropolitan police court.

Clerk of the Patents. By the 37 & 38 Vict. c. 81, provision has been made for the abolition of this office connected with the Great Seal.

Clerk of the Peace. His duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.

As to his appointment, etc., in a quarter-sessions borough, see Municipal Corporations Act, 1882, s. 164.

Clerk of the Petty Bag. By the 37 & 38 Vict. c. 81, provision has been made for the abolition of this office connected with the Great Seal.

Clerk of Warrants in Common Pleas, for registering deeds in Middlesex. See 7 Wm. IV. & 1 Vict. c. 30, s. 28. And see now Jud. Act, 1873, s. 34.

Clerks of Assize, officers who officiate as associates on the circuits. They record all judicial proceedings done by the judges on the circuit.

Clerks of the Enrolments in Chancery. Their offices and those of their deputies are abolished by 5 & 6 Vict. c. 103.

Clerks of Records and Writs. Three officers in Chancery appointed under 5 & 6 Vict. c. 103. See their duties, *Smi. Ch. Pr.* 28; *Dan. Ch. Prac.*, 4th ed., 686 *et seq.* They are now officers of the Supreme Court (Jud. Act, 1873, s. 77).

Client [fr. *cliens*, Lat., said to contain the same element as the verb *clueo*, to hear or obey, and accordingly compared by Niebuhr with the German word *hoeriger*, a dependent], a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice. The relation between solicitor and client, and the power which his situation gives the former over the latter, makes it impossible to be perfectly assured, in certain cases, whether in their transactions the client is a free agent or under influence and imposition; a Court of Equity, therefore, will not let a solicitor take a security from his client, pending a suit, by way of gratuity, however reasonable it might be; and Equity will not allow a solicitor to make a purchase from his client whilst the relation subsists.

Among the Romans, nearly all citizens were comprehended into two classes—patron and client. Their relative rights and duties were as follows:—The patron was the legal adviser of the client; he was the client's guardian and protector, as he was the guardian and protector of his own children; he maintained the client's suit when he was wronged, and defended him when another complained of being wronged by him; in a word, the patron was the guardian of the client's interests both public and private. The client contributed to the marriage portion of the patron's daughter, if the patron were poor; and to his ransom, or that of his children, if taken prisoners; he paid the costs and damages of a suit which the patron lost, and of any penalty in which he was condemned; he bore a part of the patron's expenses incurred by his discharging public duties, or filling the honourable places in the state. Neither party could accuse the other or bear testimony against the other, or give his vote against the other. This relationship between patron and client subsisted for many generations, and resembled in all respects a relationship by blood. It was the glory of illustrious families to have many clients, and to add to the number transmitted to them by their ancestors.—*Smith's Dic. of Antiq.* The word is used in modern practice to signify the relation of the suitor to his solicitor, and also to his counsel; and, besides, the relation of solicitor to counsel.

Clifford's Inn, an Inn of Chancery. See INNS OF CHANCERY.

Cloere [fr. *cloaca*, Lat.], a prison.

Close, a field or piece of land parted off from other fields or common land by banks, hedges, etc. Every entry upon another's land (unless by the owner's leave, or in some very particular cases) is an injury of wrong, for which an action of trespass will lie to recover such damages as a jury may think proper to assess, and this injury is called trespass *quare clausum fregit*, or trespass for breaking a man's close.

Close rolls, and **Close writs,** royal letters, under the Great Seal, addressed to particular persons for particular purposes, which, because they are not intended for public inspection, are closed and sealed, and recorded in the close rolls; hence their name.—2 *Bl. Com.* 346.

Close of pleadings. In a civil action 'as

soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.' (R. S. C. 1883, Ord. XXIII., Rule 5.)

Closh, an unlawful game (supposed to be the same as skittles), forbidden by 17 Edw. IV. c. 3, and 33 Hen. VIII. c. 9.

Cloture. The procedure in deliberative assemblies whereby debate is closed. Introduced in the English Parliament in the session of 1882.

Clough, a valley.—*Domesday.* Also an allowance of two pounds in every hundredweight for the turn of the scale, on buying goods wholesale by weight.—*Lex. Mercat.* See ALLOWANCE.

C.L.P. Act. Abbreviation for Common Law Procedure Act.

Club-law, regulation by force; the law of arms.

Clubs, or **Club-houses,** associations to which individuals subscribe for purposes of mutual entertainment and convenience; the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. The members of a club, merely as such, are not liable for debts incurred by the committee, for work done or goods supplied to the club. See 2 *M. & W.* 172.

Clypeus, or **Clipeus,** a shield; metaphorically one of a noble family. *Clypei prostrati,* noble families extinct.—*Mat. Paris,* 463.

Coadjutor, an assistant, helper, or ally; particularly a person appointed to assist a bishop, who from age or infirmity is unable to perform his duty. 52 *Geo. III.* c. 62; 1 *Gibs. Cod.* 155. As to the distinction between an executor and a coadjutor, see *Wms. Exs.,* Pt. I., Bk. iii., Ch. ii.

Coal, may be sold by weight only. Weights and Measures Act, 1889, 52 & 53 Vict. c. 21, s. 20.

Coal Mines. The Coal Mines Regulation Act, 1887, 50 & 51 Vict. c. 58, which was framed upon the Report of a Royal Commission which sat for 6 years since its appointment in 1879, and re-enacts with important amendments the Coal Mines Regulation Act, 1872, contains a set of elaborate enactments for the regulation and inspection of coal mines. The employment of all women below ground and of boys or girls under 12 either above or below ground is prohibited, and the hours of employment of boys of or above 12 below ground restricted to 54 hours a week. A register is directed to be kept of the boys, girls, and women employed. Wages may not be paid at public-houses. 'Check-weighers,' to see that the coal, where the wages depend on the amount gotten, is properly weighed, may be appointed by the men. Single shafts are prohibited as a general rule. Certificated managers are appointed in every mine. Mine owners or their managers are to supply Government inspectors with returns and plans, and also must give notice of accidents. Thirty-nine 'General Rules' with regard to ventilation, safety lamps, the use of explosives below ground and other matters are to be observed in every mine, and provision is made for the establishment of 'special rules' to meet the particular circumstances of particular mines.

The Act applies to mines of coal, stratified ironstone, shale, and fire-clay.

Coal-note, a particular description of promissory note formerly in use in the port of London. See 3 Geo. II. c. 26, ss. 7, 8; repealed by 47 of Geo. III. sess. 2, c. 68, s. 28.

Coal-whippers, labourers discharging the cargoes of vessels laden with coals in the port of London. See 6 & 7 Vict. c. 101, which established a coal-whippers' register.

Coast-guard. See 19 & 20 Vict. c. 83.

Coasting trade. See 12 & 13 Vict. c. 29; 17 & 18 Vict. c. 5; and 18 & 19 Vict. c. 96.

Coat armour, heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally they were painted on the shields of the Christian knights, who went to the Holy Land during the crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights when clad in armour from one another.

Cocherings, or **Cosherings,** Irish exactions or tributes, now reduced to chief rents. See BONAUGHT.

Cocket, a sealed label given to the Master of an outward-going ship certifying that the vessel has been duly cleared by the officers.

Cock-fighting, a criminal offence.—12 & 13 *Vict.* c. 92; and 17 & 18 *Vict.* c. 60.

Cock-pit, a name which used to be given to the Judicial Committee of the Privy Council, the Council-room being built on the old cock-pit of Whitehall Place.

Cocksetus, a boatman, a cockswain.—*Cowel.*

Cocula, a cogue or drinking-cup.

Code, a collection or system of laws. The collection of laws and constitutions, made by order of the Emperor Justinian, is distinguished by the appellation of 'The Code' by way of eminence. See CODEX JUSTINIANEUS.

The Code Napoleon, or Civil Code of France, proceeding from the French Revolution, and the administration of Napoleon

while First Consul, effected great changes in the laws of that country. Framed in the first instance by a commission of jurists appointed in 1800, this code, after having passed both the tribunate and the legislative body, was promulgated in 1804 as the 'Code Civil des Français.' When Napoleon became emperor, the name was changed to that of Code Napoleon, by which it is still often designated, though it is now styled by its original name of Code Civil. A Code de Procédure Civile, a Code de Commerce, Code d'Instruction Criminelle, and Code Pénal, were afterwards compiled and promulgated under Bonaparte's administration. To these was subsequently added a Code Forestier, or regulations concerning the forests, which was promulgated under Charles X. in 1827. All these codes are sometimes called 'Les six Codes.' A Code de la Conscription, and a Code Militaire, were also promulgated under Napoleon. All these codes under his administration are sometimes confusedly designated by the name of the Code Napoleon. —*Life of Napoleon, by Vieusseux; Myer's Esprit des Institutions Judiciaires.*

In British India the law has been partly codified; in Great Britain the only 'codifications' are those effected by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61—'an act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes,' and the Partnership Act, 1890, 53 & 54 Vict. c. 39—'an act to declare and amend the law of Partnership.' There have no doubt been a great many consolidation acts (see that title) passed in recent years. But *consolidation* merely reduces into shape the law as already written in many existing statutes; whereas *codification* not only does that, but fuses into the new whole the common law (as laid down by judicial decisions) besides.

A Criminal Code (Indictable Offences) Bill was submitted to Parliament in 1878. This Bill, which was drawn by Mr. Justice Stephen when at the Bar, was referred to a Royal Commission consisting of Lord Blackburn, Mr. Justice Lush, Mr. Justice Stephen, and Mr. Justice Barry (an Irish Judge). After the Report of the Commissioners the Bill was re-introduced, and referred to a select Committee of the House of Commons, whose sittings, however, were cut short by a dissolution of Parliament. The Bill has not since been proceeded with. For a historical sketch of the subject of codifications, see further *Holland's Essays on the Form of the Law*, 29.

Codex, a roll or volume.

Codex Justinianeus. In February of the year A.D. 528, Justinian appointed a commission, consisting of ten persons, to make a new collection of imperial constitutions. The commission was directed to compile one code, from those of Gregorianus, Hermogenianus, and Theodosius, and also from the constitutions of Theodosius made subsequently to his code from those of his successors, and from the constitutions of Justinian himself.

The code was divided into twelve books, each book into titles, and each title into laws, each law containing several parts. The first is called *Principium*, being the beginning of the law, and those which follow, *paragraphs*, so that the part next to the beginning is the first paragraph: a Greek term signifying a part of a section of a law that contains one article, the sense whereof is complete.

For the contents of these books, see former editions of this work.

Within six years after the publication of the code, it was suppressed as imperfect, and replaced by a new edition entitled the Codex Repetitæ Prælectionis, containing 200 of Justinian's own laws, and the 50 decisions on the most obscure and debatable points of jurisprudence.

They had the force of law given them by the emperor's constitution placed at the head of the work by way of preface.

The letter C. is invariably the mark of the Codex, which may be variously quoted by the initial words of the paragraph, law, book, or title, thus: § *ad. fil. l.*, *Meminimus*, *C. De Jur. Fisc.* or *Quando et quibus.*

By the initial words and numbers of the paragraphs and laws, and the initial words of the book and title, thus: § *ad. fil.* 1, *Meminimus*, 2, *C. De Jur. Fisc.* or *Quando et quibus.*

By the number of the law and paragraph, with the initial words of the book or title, thus: § 1, *l.* 2, *De Jur. Fisc.* or *Quando et quibus.*

The modern method adopts simply numbers, thus: *C.* 10, 32, 2, *l. Pr.* stands for the *Principium*, or first paragraph not numbered, and *in fin.* or *fine* for the latter part of the *lex.*— 1 *Colqu. R. C. L.* 58—60. See CIVIL LAW.

Codex Theodosianus. In the years 429 and 435, Theodosius II., commonly called Theodosius the Younger, appointed commissions consisting first of eight then of sixteen persons, to form into a code all the edicta and leges generales from the time of Constantine, and according to the model of those of Gregorianus and Hermogenianus. What we have now is the code which was compiled by the second commission. This code was completed and promulgated as law in the Eastern empire in 438, and declared to be the sub-

stitute for all the constitutions made since the time of Constantine. In the same year the code was forwarded to Valentinian III., the son-in-law of Theodosius, by whom it was laid before the Roman Senate, and confirmed as law in the Western empire.—*Smith's Dict. of Antiq.*

Codicil [fr. *codicillus*, Lat., a little book, tablet, or writing], a supplement to a will, containing anything which the testator wishes to add, or any explanation or revocation of what the will contains. It must be executed with the same formalities as a will under the Wills Act, 1 Vict. c. 26, by s. 1 of which the term 'will' extends to a codicil.

Codification. The collection of all the principles of any system of law into one body after the manner of the Codex Justinianeus and other codes. See CODE.

Co-emptio, the sale of a wife to a husband. —*Civil Law.* Consult *Colquhoun's Roman Civil Law*, Vol. I., s. 558.

Co-emption, the act of purchasing the whole quantity of any commodity.

Cofferer of the Queen's Household, a principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, had a special charge and oversight of the other officers, whose wages he paid. He passed his accounts in the Exchequer.—30 *Eliz.* c. 7.

Cogitationis pœnam nemo meretur. 2 Inst. Jur. Civ. 658.—(No man deserves punishment for a thought.) But see TREASON.

Cognati, relations by the mother's side.

Cognatione. See COSENAGE.

Cognisor, and **Cognisee.** The former is he who passed or acknowledged a fine of lands or tenements to another; the latter is the person to whom the fine of the lands, etc., was acknowledged.—32 *Hen. VIII.* c. 5.

Cognitionibus mittendis, an abolished writ to a Justice of the Common Pleas, or other, who has power to take a fine, who having taken the fine defers to certify it, commanding him to certify it.—*Reg. Orig.* 68.

Cognitor, a person appointed by a party to a suit to conduct it for him.—*Civil Law.*

Cognizance, or **Conusance,** the hearing of a thing judicially; also an acknowledgment of a fine; and in replevin it was the pleading of a defendant who acted as bailiff, etc., to another in making a distress, by which he alleged the right or title to be in that person by whose command he acted. If the person who ordered the distress was sued, his pleading was called an Avowry.—*Steph. Plead.*, 225.

Cognance, or *Conusance*, *of pleas* is a privilege granted by the Crown to a town or place, to hold pleas of all contracts, etc., within the place; and when a person is impleaded for such matters in the High Court of Westminster, the mayor, etc., may ask cognizance of the plea, and demand that it shall be determined before him.—*Termes de la Ley.* Conusance was successfully claimed by the university of Oxford over an action to which an undergraduate was defendant in *Ginnett* v. *Whittingham*, 16 *Q. B. D.* 761, though the plaintiff resided in London, and had no connection with the university.

Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order in course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign state, the several seals of the Queen, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries. See *Roscoe's Nisi Prius.*

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. 6 Co. 65.—(The cognomen is derived from the blood of ancestors, and is intrinsic; and agnomen arises from an event, and is extrinsic.)

Cognovit actionem (*he has confessed the action*), a defendant's written confession of an action brought against him, to which he has no available defence. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorises the plaintiff's attorney to do everything necessary in order to obtain judgment.

The 3 Geo. IV. c. 39, s. 3 enacts that every *cognovit* given in the Court of Queen's Bench, or a true copy thereof, if given in any other Court, shall, together with an affidavit of the time of the execution thereof, be filed within 21 days, or be void against the assignees, if the defendant become bankrupt. The 6 & 7 Vict. c. 66, provides that in addition, another book or index shall be kept, containing the names, additions, and descriptions of the defendants, etc., giving any *cognovit*, but containing no farther particulars. This statute was passed to prevent frauds on creditors by a secret *cognovit.* By 32 & 33 Vict. c. 62, s. 24, a warrant of attorney to confess judgment in any personal action, or *cognovit actionem* given by any person, is not of any force unless there is present some solicitor of the supreme court on behalf of such person, expressly named by him, and attending at his request to inform him of the nature and effect of such

warrant or cognovit before the same is executed, which solicitor must subscribe his name as a witness. These provisions come in place of those contained in the 1 & 2 Vict. c. 110, ss. 9, 10, which are repealed by 32 & 33 Vict. c. 83. The 32 & 33 Vict. c. 62 also contains various provisions in regard to the filing of warrants of attorney, cognovits, and judge's orders.—2 *Chit. Arch. Prac.*

Cohæredes una persona cesnentur, propter unitatem juris quod habent. Co. Litt. 163. —(Co-heirs are deemed as one person, on account of the unity of right which they possess.)

Co-heir, one of several to whom an inheritance descends.

Co-heiress, a woman who has an equal share of an inheritance with another woman.

Cohuagium, a tribute made by those who meet promiscuously in a market or fair.—*Du Cange.*

Coif [fr. *coiffe*, Fr.], the badge of serjeants-at-law, who are called serjeants of the coif, from the lawn coif they wore on their heads under their caps when created serjeants.—*Cowel.* See SERJEANT, and consult *Manning's Serviens ad legem, and Pulling's State and Degree of the Coif.*

Coigne, horse-meat, man's meat, and money at pleasure.—*Irish Term.*

Coin [fr. *coign*, Fr.; *cuneus* Lat., a wedge], a piece of metal stamped with certain marks, and made current at a certain value. The coining of money is in all States the prerogative of the sovereign power; and, as money is the medium of commerce, it is the Crown's prerogative and monopoly, as arbiter of domestic commerce, to give it authority or make it current.

By 24 & 25 Vict. c. 99, it is made a felony to counterfeit coin (s. 2); to colour or gild, so as to make a resemblance to gold or silver coin (s. 3); to impair or lighten coin (s. 4); to have in unlawful possession filings or clippings produced by impairing or lightening coin (s. 5); to buy or sell or import or utter counterfeit coin (ss. 6, 7, and 8). There are numerous other provisions tending to the suppression of the manufacturing, importing, and uttering of counterfeit coin.

By 33 & 34 Vict. c. 10, the laws relating to the coinage and Her Majesty's Mint are consolidated and amended, and that act fixes the standard of all coins as specified in the first schedule. See TENDER.

Coke, Sir Edward, Chief Justice of England in the time of James I. Author of the Institutes, and of an edition of Littleton's Treatise on Tenures, and of Reports (see REPORTS). A famous text-writer and reporter among English lawyers, one of whose great characteristics, however, has been not unjustly said by Sir James Stephen in his *Digest of the Criminal Law*, 3rd. ed. 1883 at p. 364, to be an 'utter incapacity for anything like correct language or consecutive thought.'

Cold-water-ordeal, the trial which was ordinarily used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up.—*Verstegan.*

Coliberts, tenants in socage, particularly such villeins as were manumitted or made freemen; but they had not an absolute freedom, for though their condition was better than that of servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants.—*Du Cange.*

Collate (*v.a.*). See COLLATION.

Collateral, indirect, sideways, that which hangs by the side; applied in several ways, thus:—*collateral assurance*, that which is made over and above the deed itself; *collateral consanguinity or kindred*, which descend from the same stock or ancestor as the lineal relation, but do not descend from each other, as the issue of two sons; *collateral issue*, where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, viz., that he or she is not the same that was attainted, etc., the issue upon which when taken is tried by a jury *instanter*; *collateral security*, where a deed is made of other property, besides that already mortgaged, for the better safety of the mortgagee, or a bill of exchange given, or pledge deposited to secure a pre-existing debt; and *collateral contract*, where a contract by word of mouth co-exists with a contract in writing made at the same time, notwithstanding the general rule that an oral merges in a written contract.

Collateral warrants, abolished by 3 & 4 Wm. IV., c. 74, s. 14, was where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor, as where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. The whole doctrine of collateral warranty is repugnant to justice; and even its technical grounds are so obscure that the ablest legal writers

are not agreed upon the subject.—*Wright's Tenures*, 168; *Gilbert's Tenures*, 143.

Collatio bonorum (*a contribution of goods*). Where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death, according to 22 & 23 Car. II. c. 10.

Collation, the comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

Collation of seals, when upon the same label one seal was set on the back or reverse of the other.

Collation to a benefice, where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution.—2 *Bl. Com.* 22.

Collatione factâ uni post mortem alterius, a writ directed to justices of the Common Pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the Crown, where there had been a demise of the Crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another.—*Reg. Orig.* 31.

Collatione Heremitagii, a writ whereby the king conferred the keeping of an hermitage upon a clerk.—*Reg. Orig.* 303, 308.

Collative advowson. See ADVOWSON.

Collegatory, a person who has a legacy left to him in common with other persons.

College [fr. *colligo*, Lat., to bring to], a civil corporation, company, or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of the colleges is called an university.

Collegia, the guild of a trade.—*Civil Law.*

Collegiate Church, a religious house built and endowed for a society or body corporate, a dean or other president and secular priest, as canons or prebendaries, independently of any cathedral.

Collegium est societas plurium corporum simul habitantium. Jenk. Cent. 229.—(A college is a society of several persons dwelling together.)

Colliery. See COAL MINES.

Colligendum bona defuncti (*Letters ad*). In defect of representatives and creditors to administer to an intestate, etc., the Probate Court may commit administration to such discreet person as it approves of, or grant him these letters *to collect the goods* of the deceased, which neither makes him executor nor administrator; his only business being to keep the goods in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased.—1 *Wms. Ex.*, 7th ed., 275, 445.

Collision of ships, the striking or running foul of one ship against another. The remedy is either an action at law, or a suit in the Court of Admiralty. The possibilities under which a collision may occur, and the rules acted on by the Court of Admiralty, have been thus stated by Lord Stowell in 2 *Dods.* 85:—'In the *first* place, it may happen without blame being imputable to either party: as where the loss is occasioned by a storm or any other *vis major*, in that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. *Secondly*, a misfortune of this kind may arise where both parties are to blame, where there has been a want of due diligence or of skill on both sides; in such a case the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them. *Thirdly*, it may happen by the misconduct of the suffering party only, and then the rule is that the sufferer must bear his own burthen. *Lastly*, it may have been the fault of the ship which ran the other down, and in that case the injured party would be entitled to an entire compensation from the other.'

In a Court of Common Law the same rule prevailed in the 1st, 3rd, and 4th cases; but in the 2nd, viz., where both parties are to blame, the rule was that if the negligence of both substantially contributed to the accident, neither could maintain an action against the other; but that if one of them by the exercise of ordinary care might have avoided the consequences of the other's negligence, the former was liable for any injury that the latter might have sustained. See *Tuff* v. *Warman*, 2 *C. B. N. S.* 740. But by the Judicature Act, 1873, s. 25 (9), it is provided that in any cause or proceeding for damages arising out of a collision between two ships, if both ships are found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

In pursuance of the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), Orders of Council were issued in 1863 and 1879, promulgating Regulations for Preventing Collisions at Sea, which contain rules concerning lights, rules concerning fog

signals, steering, and sailing rules. As to the Mersey, see 37 & 38 Vict. c. 52.

Collistrigium, a pillory.

Collitigant, one who litigates with another.

Collocation, the order in which creditors are placed and paid.—*Fr. Law.*

Colloquium, a talking together; a conversation. 2. A term in pleading applied to the statement in declaration for libel or slander, that the libellous or slanderous imputation had reference to the plaintiff.

Collusion [*collusio*, Lat., fr. *colludo*, to play together, to unite in the same play or game, and thus to unite for the purposes of fraud or deception], a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person, or for some improper purpose. Collusion in judicial proceedings is a secret agreement between two persons that the one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose, and appears to be of two kinds. (1) When the facts put forward as the foundation of the sentence of the Court do not exist. (2) When they exist, but have been corruptly preconcerted for the express purpose of obtaining the sentence. In either case the judgment obtained by such collusion is a nullity. See *The Duchess of Kingston's case*, 2 *Smith's Leading Cases*. Collusion between the petitioner and either of the respondents in presenting or prosecuting a suit for dissolution of marriage, is a bar to such suit.—20 & 21 *Vict.* c. 85, ss. 30 & 31.

Colombo (Harbour) Loan Act, 1874.—37 & 38 *Vict.* c. 24.

Colonial Attorneys Relief Act, 1874.—37 & 38 *Vict.* c. 41, amended by the Colonial Attorneys Relief Act Amendment Act, 1884, 47 & 48 *Vict.* c. 24.

Colonial clergy. As to the position of clergy ordained in the colonies when they come to England, see 59 Geo. III. c. 60, which enacted that no such clergyman should officiate or hold preferment in England without the consent of the archbishop of the province, and of the bishop of the diocese; and see 3 & 4 Vict. c. 33; 5 Vict. c. 6; 5 & 6 Vict. c. 4; 15 & 16 Vict. c. 52; 16 & 17 Vict. c. 49; 26 & 27 Vict. c. 121; and 27 & 28 Vict. c. 94; and particularly 'the Colonial Clergy Act, 1874,' 37 & 38 Vict. c. 77.

Colonial coinage. By 29 & 30 Vict. c. 65, the Queen in Council may make gold coined in the colonies legal tender in England, and may revoke such order. See TENDER.

Colonial Courts Jurisdiction Act, 1874. See 37 & 38 Vict. c. 27.

Colonial dioceses. Calcutta, Madras, Bombay, Colombo, Mauritius, Victoria, Hong Kong, Labuan, Cape Town, Sierra Leone, Natal, Graham's Town, Quebec, Montreal, Toronto, Nova Scotia, Fredericton, Newfoundland, Rupert's Land, Jamaica, Barbadoes, Antigua, Guiana, Sydney, Newcastle, Melbourne, Adelaide, Tasmania, New Zealand, Gibraltar, Jerusalem, etc., etc.

Colonial Governors (Pensions) Acts. See 28 & 29 Vict. c. 113, and 35 & 36 Vict. c. 29.

Colonial lands and casual revenues of the Crown.—15 & 16 *Vict.* c. 39.

Colonial laws repugnant to the home laws or statutes are void.—7 & 8 *Wm. III.* c. 22 and 16 & 17 *Vict.* c. 107, s. 190. The validity of laws passed by colonial legislatures is established and defined by the 28 & 29 Vict. c. 63, by which it is enacted that no colonial law shall be void for repugnancy to the law of England, unless it be repugnant to the provisions of some Act of Parliament extending to the colony, or to any order made under authority of such Act, or having in the colony the force and effect of such Act. In the case of such repugnancy the colonial law shall be void to the extent thereof and not otherwise. By the same Act all colonial legislatures are empowered to establish courts of judicature, and to abolish and re-constitute the same, and to make laws respecting the constitution, powers, and procedure of the legislature in each colony respectively, in accordance with the requirements of any Act of Parliament in force in every such colony.

As to the power of a 'Federal Council of Australasia' to pass bills affecting certain matters in the Australasian Colonies, see 'Federal Council of Australasia Act 1885,' 48 & 49 Vict. c. 60.

Colonial lighthouses.—18 & 19 *Vict.* c. 91.

Colonial Marriages Validity Act, 28 & 29 Vict. c. 64. All the laws made or to be made by the legislature of any of Her Majesty's possessions for the purpose of establishing the validity of marriages previously contracted therein, are to have the same effect within all parts of Her Majesty's dominions as within the place where they were made.

Colonial Office, the department of State through which the Sovereign appoints Colonial Governors, etc., and communicates with them. Until the year 1854, the Secretary for the Colonies was also Secretary for War. See WAR OFFICE.

Colonus, a husbandman or villager, who was bound to pay yearly a certain tribute; or, at certain times in the year to plough some part of the lord's land; hence *clown*.

Colony [fr. *colo*, Lat., to cultivate], a settlement in a foreign country possessed and cultivated, either wholly or partially, by

immigrants and their descendants, who have a political connection with and subordination to the mother-country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country.

England was not the first among European nations that planted settlements in parts beyond Europe. But by her own colonization, and by the conquests of the settlements of other nations, she has now acquired a more extensive dominion of colonies and dependencies than any other nation. The colonies of Great Britain exceed in number, extent, and value those of every other country.

Colonies are acquired either (1) by conquest, (2) by cession under treaty, (3) by occupancy, as Newfoundland, New South Wales, and Van Dieman's Land, or (4) by hereditary descent. By far the greater part of the colonies was acquired by conquest or cession. In the first two cases the territory retains its former laws until they are altered by the home government, *i.e.*, the Queen in Council, yet subordinate to the authority of Parliament. The alterations may be general or partial, leaving the old laws still in force touching matters unprovided for. In the third case (which is strictly a plantation), the English laws, so far as they are applicable to the condition of an infant colony, are *ipso facto* in force in such colony, for there can be no existing laws to contest the superiority; and besides, the occupants could not have any power to establish laws independently of the mother-country, to whom their allegiance is still due; and they also carry with them the laws of their country, which are their inalienable birthright. Such a colony is, then, not subject to legislation by the Crown, nor is a country which comes to the Crown by title of descent. Such colonies retain their own laws till changed by the act of the imperial Parliament, to whose legislative authority every kind of colony is subject, as portions of the British dominions, and whose protection they have a right to demand, for the resistance of hostile aggression, and the peaceful possession of their territory. As a general rule, an act of parliament must name the colony in order to bind it, but there are exceptions.—*Clark's Col. Law; Burge's Col. and For. Law.* SEE COLONIAL LAWS.

Colorado Beetle. An insect indigenous to Colorado, one of the United States of America, so destructive to vegetables that an act, called the 'Destructive Insects Act, 1877,' 40 & 41 Vict. c. 68, has been passed to prevent its introduction into Great Britain by means of Orders in Council prohibiting or regulating the landing of potatoes, etc., likely to introduce it, and giving powers to destroy crops on which it may be found, and compensation to persons whose crops may be destroyed accordingly.

Colour, a term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *primâ facie* right; and the meaning of the rule, that pleadings in confession and avoidance should give colour, was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Colour was either express, *i.e.*, inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading.—*Steph. Plead.* 233. Express colour was abolished by *C. L. P. Act*, 1852, s. 64.

Colour of Office, an act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour.—*Plowd.* 64.

Colourable alteration, an alteration made only for the purpose of evading the law (of copyright, for instance).

Colpices, young poles, which being cut down, are made levers or lifters.—*Blount.*

Colpo, a small wax candle.

Combarones, the fellow barons or commonalty of the Cinque Ports.

Combat, trial by single. SEE BATTEL.

Combaterræ [fr *cumbe*, Sax.; *kum*, Br.; *comb*, Eng.], a valley or piece of low ground between two hills.—*Ken. Glos.*

Combe [*ccom*, W.], a narrow valley.

Combination, an assembly of workmen met to perpetrate unlawful acts. The acts on this subject, 6 Geo. IV. c. 129; 22 Vict. c. 34; and 9 Geo. IV. c. 31, are greatly altered by the Conspiracy and Protection of Property Act, 1875.

Come ceo; as well for this.

Comes, a count, or superior officer of a county.

Cominus [Lat.], hand-to-hand; in personal contact.

Comitatu commisso, a writ or commission whereby a sheriff is authorised to enter upon the charges of a county.—*Reg. Orig.* 295.

Comitatu et castro commisso, a writ by which the charge of a county, together with the keeping of a castle is committed to the sheriff.—*Ibid.*

Comitatus, a county.

Comites, earls, courtiers, or companions.

Comitissa [Lat.], a countess.

Comitiva, a companion or fellow-traveller; a troop or company of robbers.

Comity of nations, the most appropriate phrase to express the true foundation and

extent of the obligation of the laws of one nation within the territories of another. It is derived from the voluntary consent of th latter; and it is inadmissible, when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule, affirming or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy, or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided.—*Story's Conflict of Laws*, s. 38, and *Westlake's Pr. Int. Law.*

Commandery, a manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the commander, who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct.

Commandite or **in commendam,** partnerships in France which are limited where the contract is between one or more persons, who are general partners, and jointly and severally responsible, and one or more other persons, who merely furnish a particular fund or capital stock, and thence are called *commandataires*, or *commendataires*, or partners *en commandite*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complimentary partners, the partners *en commandite* being liable to losses only to the extent of the funds of capital furnished by them.—*Code of commerce of France*, art. 23, 24; *Pothier de Société*, n. 60, 102. These partnerships are allowed in several of the States of America.—3 *Kent's Com.* 35. The Partnership Act 1865, 28 & 29 Vict. c. 86, s. 1, provided that the advance of money by way of loan to a person engaged in trade upon a contract in writing that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, should not 'of itself' constitute the lender a partner with the borrower, and this enactment has been re-enacted in the Partnership Act 1890.

Commandment, order, direction; also the offence of inducing another to transgress the law, or do anything contrary to it. The civilians call it *mandatum.*

Commarchio, the confines of the land.

Commenda, Commendam, or **Ecclesia commendata,** a living commended by the Crown to the care of a clerk, to hold till a proper pastor is provided for it. This may be temporary for one, two, or three years, or perpetual, being a kind of dispensation to avoid the vacancy of the living, and is called a *commendam retinere*, and has been usually granted to bishops in the poorer sees to aid the deficiency in their episcopal revenue. There was also a *commendam recipere*, which was to take a benefice *de novo* in the bishop's own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are to another clerk.—*Mirch. on Adv.* c. vii. s. 6. But now by 6 & 7 Wm. IV. c. 77, s. 18, no ecclesiastical dignity, office, or benefice shall be held *in commendam* by any bishop unless he shall have held the same when the act passed; and every *commendam* thereafter granted, whether to retain or to receive, and whether temporary or perpetual, shall be absolutely void.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum à supremâ potestate. Moore 905.—(A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.)

Commendators, secular persons upon whom, during Popery, ecclesiastical benefices were bestowed in Scotland; called so because the benefices were commended, and intrusted to their supervision.

Commendatory, he who holds a church living or preferment *in commendam.*

Commendatory letters, such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese travelling thither, that they may be received among the faithful; or that the clerk may be promoted; or necessaries administered to others, etc.

Commendatum. See Deposit.

Commendatus, one who lives under the protection of a great man.—*Spelm.*

Commerce [fr. *commutatio mercium*, Lat.], the intercourse of nations in each other's produce and manufactures, in which the superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, colonies, etc.; the latter to mutual dealings at home.—See *McCull. Com. Dict.*

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. 3 Inst. 181. —(Commerce by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.)

Commissariat, the whole body of officers in the commissaries' department.

Commissary, one who is sent or delegated to execute some office or duty as the representative of his superior. In ecclesiastical law, an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. In military affairs, an officer who has the charge of furnishing provisions, clothing, etc., for an army.

Commission, the warrant or letters-patent which all persons exercising jurisdiction, either ordinary or extraordinary, have, to authorise them to hear or determine any cause or action, or do other lawful things, as the commission of the judges, etc. There was formerly a High Commission Court founded on 1 Eliz. c. 1, but it was abolished in the reign of Charles II., though an impotent attempt was made to re-establish it during the succeeding reign.

In commerce, the order by which any one traffics or negotiates for another; also the percentage given to factors or agents for transacting the business of others.

Commission of Anticipation, an authority under the Great Seal to collect a tax or subsidy before the day.—15 *Hen. VIII.*

Commission of Array, issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenancy, which contained in substance the same powers as these commissions, superseded them.—2 *Steph. Com.*

Commission of Assize. See ASSIZE.

Commission of Bankruptcy, the authority formerly given by the Lord Chancellor to certain commissioners, empowering them to proceed in the bankruptcy of a trader. Abolished by 1 & 2 Wm. IV. c. 56, s. 12; as to construction of unrepealed acts mentioning it, see Bankruptcy Act, 1883, s. 149.

Commission of Charitable Uses.—43 *Eliz.* c. 4. See CHARITABLE USES.

Commission-day, the opening day of the assize; so called because on that day the Royal Commission to the Judges was formerly read in court—a ceremony dispensed with by Rule 14 of the Circuits Order, 1884, *Chit. Stat.*, vol. vii., p. 804, Rule 13 of which Order provides for the postponement of Commission Day. Till that Order, Court business was never transacted on Commission Day, whereas now it very frequently is.

Commission del Credere, where an agent of a seller undertakes to guarantee to his principal the payment of the debt due by the buyer. The phrase *del credere* is borrowed from the Italian language, in which its signification is equivalent to our word guarantee or warranty.—*Story's Agency*, 28.

Commission of Delegates, issued under the Great Seal to certain persons, usually lords, bishops, and judges, to sit upon an appeal to the king in the Court of Chancery, where a sentence was given in any ecclesiastical cause by the archbishop.—25 *Hen. VIII.* c. 19, repealed by 2 & 3 *Wm. IV.* c. 92.

Commission of Lunacy, issued out of Chancery, to inquire whether a person alleged to be a lunatic be so or not. See IDIOTS AND LUNATICS.

Commission of Patents for Inventions. See LETTERS-PATENT.

Commission of Rebellion, an attaching process, formerly issuable out of Chancery, to enforce obedience to a process or decree; abolished by Order of 26th August, 1841.

Commission of Sewers, directed to certain persons to see drains and ditches well kept and maintained in the marshy parts of England for the better conveyance of the water into the sea, and the preservation of the grass upon the land.—13 *Eliz.* c. 9.

Commission of the Peace, issues under the Great Seal for the appointment of justices of the peace.

Commission to Examine Witnesses, was under 15 & 16 Vict. c. 86, s. 35, issued in Chancery suits, where the witnesses resided abroad; and at common law under the 1 Wm. IV. c. 22, s. 4.

Now by R. S. C. 1883, Ord. XXXVII., it is provided that the court or a judge may at any time for sufficient reason order that any witness whose attendance in court ought from some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner. For form of Order for Commission, see No. 36 in App. K. of R. S. C. 1883.

Commission to Inquire of Faults against the Law, anciently set forth on extraordinary occasions and corruptions.

Commission to take answer in Chancery, issued when defendant lives abroad, to swear him to such answer.—15 & 16 *Vict.* c. 86, s. 21. Obsolete. See Jud. Acts, 1873, 1875.

Commission to take up Men for War, issued to press or force men into the Queen's service.—*Fost. Rep.* 154.

Commission merchant. A factor is commonly said to be an agent employed to sell goods or merchandise, consigned or delivered to him by or for his principal for a compensa-

tion commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale are called a consignment.—*Story's Agency*, 28.

Commissioner, a person authorised by letters-patent, Act of Parliament, or other lawful warrant, to examine any matters, or execute any public office, etc. The Commissioners Clauses Act, 1847, 10 Vict. c. 16, regulates the qualification, etc., of commissioners, who under an Act of Parliament execute undertakings of a public nature; and in particular enacts by s. 60 that they are not to be personally liable.

Commissioners for Oaths. Masters extraordinary in Chancery acted in very early times as commissioners to administer oaths to persons making affidavits (see that title) before them concerning Chancery suits, and the Judges of the Common Law Courts were authorised, under 29 Car. II. c. 5, by Commissions to impower 'what and as many persons as they should think fit and necessary' to take affidavits for one shilling fee concerning common law actions. The Masters in Chancery were succeeded by solicitors under 16 & 17 Vict. c. 78, appointed by the Lord Chancellor, the fee being one shilling and sixpence. By the Judicature Act, 1873, s. 82, every person who at the commencement of the Act was authorised to administer oaths in any court whose jurisdiction is transferred to the High Court of Justice (see s. 16), became a commissioner for the like purpose in all matters pending at any time in the High Court or the Court of Appeal. The Commissioners for Oaths Act, 1889, 52 Vict. c. 10, which amends and consolidates twenty-four enactments on the subject, enacts by s. 1 that the Lord Chancellor may from time to time, by commission signed by him, appoint practising solicitors or other fit and proper persons to be commissioners for oaths; with power, in England or elsewhere, to administer any oath or take any affidavit for the purpose of any court or matter in England, etc. But it is provided that a commissioner may not act in any proceeding in which he is solicitor to any of the parties to the proceeding, or in which he is interested, and to the same effect is R. S. C. Ord. XXXVIII., Rule 16.

The fees, one shilling and sixpence for each oath, and one shilling for each exhibit, are given by the Order as to Court Fees of 1884, replacing that of 1875, made under s. 26 of the Judicature Act, 1875.

The Commissioners for Oaths Act, 1891, allows persons to take oaths before commissioners for oaths instead of justices of the peace, in matters arising under the Pawnbrokers Act, 1872, and other Acts therein mentioned.

Commissioners of Northern Lighthouses. 17 & 18 Vict. c. 104, pt. vi., s. 389, *et seq.*, 25 & 26 Vict. c. 63, ss. 43-8.

Commissioners of Turnpike Roads. See 3 Geo. IV. c. 126, ss. 61, 62, 65, and 4 Geo. IV. c. 95, s. 32. And 3 *Steph. Com.*, 7th ed., 131.

Commissioners of Woods, Forests, Land Revenues, Works, and Buildings, Board of, established by 2 & 3 Wm. IV. c. 1, and divided into a board of 'Commissioners of Her Majesty's Woods, Forests, and Land Revenues,' 15 & 16 Vict. c. 62 (with power to the Crown to appoint in lieu of them a Surveyor-General of Her Majesty's Woods, Forests, and Land Revenues), and a board of 'Commissioners of Her Majesty's Works and Public Buildings,' which has the management of the royal parks in and near London.—14 & 15 *Vict.* c. 42, s. 21. See 29 & 30 Vict. c. 39, s. 46, and c. 62, and 37 & 38 Vict. c. 84, and 2 *Steph Com.*, 7th ed., 535.

Commissoria lex, the term applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase-money at the time agreed on.—*Dig.* 18, tit. 3.

Commitment, the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy. See the Act for the Abolition of Imprisonment for Debt, 32 & 33 Vict. c. 62, s. 5; and also COUNTY COURTS.

Committal. See COMMITMENT.

Committee, certain persons elected or appointed, to whom any matter or business is referred, either by a legislative body or by any corporation or society; e.g., a Committee of a Town Council under the Municipal Corporations Act, 1882, ss. 22, 190, or of directors under the Companies Clauses Act, 1845, s. 95.

Committee of a Lunatic or Idiot, the person to whom the care and custody of a lunatic is committed by the Court.

Committitur piece, an instrument in writing on parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him.—2 *Ch. Arch.*, 12th ed., 1208.

Commodatum. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans*; the person who receives the thing is called *commodatarius*, and the contract is called *commodatum*. It differs from *locatio* and *conductio* in this,

that the use of the thing is gratuitous.—*Dig.* 13, tit. 6; *Instit.* iii. 2, 14.

Commodum ex injuriâ suâ nemo habere debet. Jenk. Cent. 161.—(No person ought to have advantage from his own wrong.)

Common, a profit which a man has in the land of another; it derives its name from the community of interest which thence arises between the claimant and the owner of the soil, or between the claimant and other commoners entitled to the same right; all which parties are entitled to bring actions for injuries done to their respective interests, and that both as against strangers and against each other. It is called an incorporeal right, which lies in grant, as if originally commencing in some agreement between lords and tenants, for some valuable consideration which, by lapse of time, being formed into a prescription, continues, although there be no need or instrument in writing which proves the original contract or agreement. It differs from a rent, principally in freedom of enjoyment on the one hand, and in freedom from obligation on the other; which the law expresses by the quaint antithesis that it lies not in *render* but in *prender*. It is also incidentally distinguished by its fruits being always taken in kind, and being in general not otherwise measured than by limiting the instruments of enjoyment. The Prescription Act, 2 & 3 Wm. IV. c. 71, s. 1, enacts, that after thirty years' enjoyment a right of common cannot be defeated by merely showing it commenced within time of memory, and after sixty years' enjoyment the right shall be absolute and indefeasible, unless it appear that the same was taken and enjoyed under some deed or writing.

There are four sorts of common, viz.:—

(1) Common of pasture, limited or unlimited, which is the right of feeding one's beasts in another's land, and this is subdivided into:

(*a*) Appendant, which is a privilege belonging to the owners or occupiers of arable land holden of a manor, to put upon its wastes their commonable beasts, viz., horses, kine, or sheep, being such as either plough or manure the soil.

(*b*) Appurtenant, which arises from no connection of tenure, nor from any absolute necessity, but may be annexed to lands in other lordships, or extend to other beasts besides such as are generally commonable, as swine, goats, or geese. This can only be claimed by grant, or by title of prescription, which supposes a now forgotten grant.

(*c*) Because of vicinage or neighbourhood (*pur cause de vicinage*), which takes place where the tenants of two adjoining manors have suffered their cattle to range indiscriminately over both wastes, and it seems that either lord may put an end to it by erecting a fence. In close connection with this, and substantially of the same kind, is *common of shack*, or the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest, to feed promiscuously in that field.

(*d*) In gross or at large, which is neither appendant nor appurtenant to land, but is annexed to a man's person, by granting it to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church or a corporation sole.

(2) Common of piscary, a liberty of fishing in another's water. It is either appendant, appurtenant, or in gross.

(3) Common of turbary, a license to dig turf upon the land of another, or in the lord's waste; it may be either appendant or appurtenant, i.e., appendant or appurtenant to a house, and not to lands, for turfs are to be burnt in the house, or it may be in gross.

(4) Common of estovers or estouviers, or necessaries, a liberty of taking necessary wood, for the use or furniture of a house, or farm, from off another's estate. The Saxon word *bote* is used by us as synonymous with the French *estovers*. House-bote, then, is a sufficient allowance of wood to repair, or to burn in the house; which latter is sometimes called fire-bote; plough-bote and cart-bote are wood to be employed in making and repairing all instruments of husbandry; and hay-bote or hedge-bote is wood for repairing of hays, hedges, or fences.—2 *Bl. Com.* 32.

The Inclosure of Commons is regulated by the Inclosure Acts, but these acts contain (see especially 8 & 9 Vict. c. 118, s. 30) many provisions for the protection of commoners and the formation of 'recreation grounds' and 'field gardens,' and the Commons Act, 1876, 39 & 40 Vict. c. 56, not only amplifies such provisions, but lays down various new regulations to prevent 'inclosure in severalty as opposed to regulation of commons' being made unless it be proved to the satisfaction of the Inclosure Commissioners and of Parliament 'that the inclosure will be of benefit to the neighbourhood, as well as to private interests, and to those who are legally interested in commons.' See *Elton* or *Hall on Commons*, and for the Inclosure Acts, see *Chitty's Statutes*, vol. iii., tit. '*Inclosure*.'

Common assurances, the legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed.

The common assurances are of four kinds:

—(1) By matter *in pais*, or deed, which is an assurance transacted between two or more private persons, *in pais*, in the country; that is (according to the old common law), upon the very spot to be transferred. (2) By matter of *record*, or an assurance transacted only in the sovereign's public courts of record, or under the authority of a public board or commission empowered by Act of Parliament to record its proceedings. (3) By special *custom* obtaining in some particular places and relating only to some particular species of property: which three are such as take effect during the life of the party conveying or assuring. (4) The fourth take no effect till after his death, and that is by *devise*, contained in his last will and testament.—2 *Bl. Com.* 290.

Common bar, otherwise called a *bar at large* or *blank bar*. If a plaintiff declared in trespass *quare clausum fregit*, for breaking his close in a certain parish, without naming or otherwise describing the close, if the defendant happened to have any freehold land in the same parish, he might be supposed to mistake the close in question for his own, and might therefore plead what was called the common bar, viz., that the close in which the trespass was committed was his own freehold. And then it would have been necessary for the plaintiff to new assign. By Rule of Court, Reg. Gen. Trin. T. 1853, r. 18, the plaintiff was bound to designate the close or place in the declaration, by name or abuttals or other description.—*Steph. Plead.* 256. See NEW ASSIGNMENT. The expression is now obsolete, as the Judicature Acts, 1873, 1875, have abolished the Common Law forms of pleading.

Common Bench [fr. *banc*, Sax., bench], a name of the Court of Common Pleas. See COMMON PLEAS.

Common Council, the councillors of the City of London. See COUNCIL.

Common counts. The indebitatus counts in declaration, for goods sold and delivered, or bargained and sold, for work done, for money lent, for money paid, for money received to the use of the plaintiff, for interest or for money due on an account stated, were so called. They are now as technical forms of pleading superseded by the Judicature Acts, 1873, 1875. See STATEMENT OF CLAIM; see also JOINDER OF CAUSES OF ACTION.

Common day of plea in land, an ordinary day in court, as *Octabis Hilarii*, *Quindena Paschæ*, etc.—51 *Hen. III.* st. 2 & 3.

Common fine, a small sum of money paid to the lords by the residents in certain leets. —*Fleta*, l. 7, c. xlviii.

Common Hall, a court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend.

Common informer, a person who prosecutes others for breaches of penal laws, or furnishes evidence on criminal trials for no other reason than to get the penalty or a share of it. Statutes occasionally provide that they may not prosecute without the leave of the Attorney-General. See, e.g., the Larceny Advertisements Act, 1870, 33 & 34 Vict. c. 65, and the Public Health Officers Act, 1884 and 1885, 47 & 48 Vict. c. 74, and 48 & 49 Vict. c. 53. Sometimes, too, as by the Larceny Advertisements Act, 1870, they have lost the benefit of their penal action by a retrospective enactment that proceedings therein be stayed on payment of their costs out of pocket. See PENAL STATUTE.

Common intendment, ordinary meaning.

Common Law [*lex communis*, Lat.], the meaning of this term is very ambiguous, the expression being used in various senses according to the objects with which it is contrasted, it being so contradistinguished, sometimes from the Statute Law, sometimes from the Civil and Canon Law, occasionally from the *lex mercatoria*, and frequently from Equity. Some writers have made use of it to designate simply a law '*common*' to all the realm. It is also sometimes adopted in opposition to criminal law, which is certainly erroneous, since the common law includes all the criminal law, which is not of positive statutory origin.

Lord Wensleydale, then Mr. Baron Parke, in *Mirehouse* v. *Mennell*, 8 *Bing.* 515, on error in the House of Lords, observes:—'Our Common Law system consists in applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, we must apply these rules when they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them, and abandon all analogy to them, in those to which they have not hitherto been judicially applied, because we think that the rules are not as convenient or reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interests of law as a science.'

The distinction between written and unwritten law is adopted from the Romans, who borrowed it from the Greeks (*Inst.* l. 1, t. 2, ss. 3, 9, 10). In thus distinguishing our own laws into the *scriptæ* or statute, and *non scriptæ* or common, we use the latter in

a peculiar and restrained sense; signifying by it nothing more than that the original institution and authority of the law are not set down in writing, as is the case with Acts of Parliament; but that it receives its binding power, as a law, from long and immemorial usage, and universal reception throughout the realm. The authenticity of these customs, rules, and maxims rests entirely upon reception and usage, as declared by our judges, who are the sworn depositaries and interpreters of our law. This common law is properly distinguished into three kinds. (1) General customs, or those applicable to and governing the whole kingdom, comprehending the law of nations and the law merchant. (2) Particular customs, i.e., affecting the inhabitants of particular districts. (3) The Civil and Canon Laws, properly denominated the ecclesiastical, military, maritime, and academical laws.—1 *Bl. Com.* 35; 1 *Br. & Had. Com.* 54; *Hale's Hist. of the Com. Law*, c. iii.: *Mackintosh's England*, 274; 1 *Kent's Com.* 447, 468.

By the Judicature Act, 1873, s. 24, all branches of the Supreme Court of Judicature are to administer Law and Equity concurrently; and by s. 25, and Jud. Act, 1875, s. 10, the rules of law on certain points are altered.

Common Law Procedure Acts, 1852, 15 & 16 Vict. c. 76; 1854, 17 & 18 Vict. c. 125; and 1860, 23 & 24 Vict. c. 126, in greater part repealed by the Civil Procedure Acts Repeal Act of 1883. See SUPREME COURT.

Common Pleas, the Court of, so called because its original jurisdiction was to determine controversies between subject and subject, one of the three Superior Courts of Common Law at Westminster, presided over by a lord chief justice and five (formerly four, until 31 & 32 Vict. c. 125, s. 11, sub-sec. 8) *puisné* judges. It was detached from the King's Court (*Aula Regis*) as early as the reign of Richard I., and the 14th clause of Magna Charta enacted that it should not follow the King's Court, but be held in some certain place. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the Queen's Bench and Exchequer in personal actions and ejectment. It had a peculiar or exclusive jurisdiction in the following cases:—

(I.) Formal or plenary.

(1) Real actions, under the C. L. P. Act, 1860, s. 26.

(2) Under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), over petitions complaining of an undue return or undue election of a member of Parliament.

(II.) Summary.

Under the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31).

(III.) Auxiliary.

(1) Registration of judgments, annuities, etc. (1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 Vict. c. 15).

(2) Under 3 & 4 Wm. IV. c. 74, respecting the fees connected with conveyances executed by virtue of the Act, and also with the examination of married women concerning their assurances. See 11 & 12 Vict. c. 70; 17 & 18 Vict. c. 75; 19 & 20 Vict. c. 108, s. 73; and 25 & 26 Vict. c. 96.

(IV.) Appellate.

Appeals from the Revising Barristers' Courts, under 6 Vict. c. 18.

By Jud. Act, 1873, s. 34, the exclusive jurisdiction of this court was retained for the 'Common Pleas Division,' which represented it; but by Order in Council of Dec. 16th, 1880, under s. 31 of that act, that division was merged in the Queen's Bench Division.

Common Prayer. See *Prayer Book.*

Common scold. See SCOLD.

Common seal, a seal used by a corporation as the symbol of their incorporation.

Common Serjeant, a judicial officer of the Corporation of the City of London: an assistant to the Recorder. See *Pulling on the Laws and Customs of London.*

Common Vouchee. Obs. See RECOVERY.

Commonable beasts, such as are necessary for the ploughing or manuring of land, as horses, oxen, cows, and sheep.

Commonalty [*populus, plebs, communitas*, Lat.], the people of England.—2 *Inst.* 539.

Commonance, the commoners, or tenants and inhabitants, who have the right of common or commoning in open field.—*Cowel.*

Commons, part of the demesne land of a manor (or land, the property of which was in the lord), which, being uncultivated, was termed the lord's waste, and served for public roads, and for common of pasture to the lord and his tenants.—2 *Bl. Com.* 90.

Commons, House of. See HOUSE OF COMMONS; PARLIAMENT.

Commonwealth, the social state of a country, without regarding its form of government; also a republic, or that form of government in which the administration of public affairs is open to all, with few, if any, exceptions. 2. The period of the administration of the Parliamentary Army, and the Protector Cromwell. The journals of this Parliament are found along with the rest. See DE JURE and UPPER BENCH.

Commorancy or **Commorant**, an abiding, dwelling, continuing, or lying in a certain place.

Commorientes, persons who die by the same accident or upon the same occasion. By English law, there is no presumption of survivorship. See *Wing* v. *Angrave*, 8 *House of Lords Cases*, 183.

Commorth or **Comorth** [fr. *cymmorth*, Brit.; *subsidium*, Lat.], a contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6.—*Cowel.*

Commote, half a cantred or hundred in Wales, containing fifty villages.—*Stat. Walliæ*, 12 Edw. I. Also a great seigniory or lordship, and may include one or divers manors.—*Co. Litt* 5.

Commune Concilium Regni Angliæ, the common council of the king and people assembled in parliament.

Communi custodia, an obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body.—*Reg. Orig.* 161; 12 *Car. II.* c. 24.

Communia placita non tenenda in scaccario, an ancient writ directed to the treasurer and barons of the Exchequer, forbidding them to hold pleas between common persons (i.e., not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same.—*Reg. Orig.* 187, since superseded by 2 & 3 Wm. IV. c. 39.

Communis error facit jus. 4 Inst. 240.—(Common error makes a right.) 'It has been sometimes said,' observed Lord Ellenborough, in *Isherwood* v. *Oldknow*, 3 *M. & S.* 396, '*communis error facit jus;* but I say, *communis opinio* is evidence of what the law is, not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the groundwork and substratum of practice.' See *Broom's Leg. Max.*, 5th ed., 139.

Communis rixatrix, a common (female) brawler, a scold.

Communism, an equality of distribution of the physical means of life and enjoyment in the view that all should work according to their capacity, and receive according to their wants.—1 *Mill's Pol. Eco.* 248.

Community, a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.

Commutation, conversion; the change of a penalty or punishment from a greater to a less; or giving one thing in satisfaction of another—as commuting tithes into a rent-charge, copyhold services into money-payments, etc., annual payments into one lump payment, as under the Pensions Commutation Act, 1871, 34 & 35 Vict. c. 36, etc.

Commutative contract, one in which each of the contracting parties gives and receives an equivalent.

Companage, all kinds of food, except bread and drink.—*Spel.*

Companies Acts. See JOINT STOCK COMPANY.

Companies Clauses Consolidation Act, 1845, 8 Vict. c. 16, an act incorporated into all acts authorising the execution of undertakings of a public nature by companies, and passed after 8th May, 1845, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in the provisions themselves. See also 26 & 27 Vict. c. 118, the Companies Clauses Act, 1863, an act of similar purpose, but not applying to any company unless incorporated by special act, and therefore materially differing from the act of 1845, 32 & 33 Vict. c. 48, amending the act of 1863, and 51 & 52 Vict. c. 48, amending the act of 1845 as to voting by proxy where shares are held by a company.

Companion of the Garter, one of the knights of that most noble order.

Company [fr. *con* and *pagus*, Lat., one of the same town, or *con* and *panis*, one that eats of the same mess], a society of persons joined in a common interest, for the purpose of carrying on some commercial or industrial undertaking.—*McCull. Comm. Dict.* See JOINT STOCK COMPANY.

Comparison of handwriting. Handwriting in dispute may be compared with any writing, proved to the satisfaction of the judge to be genuine, by the witnesses, and their evidence submitted to the jury, on the question of the handwriting in dispute—in civil cases, by 17 & 18 Vict. c. 125, s. 27, and in criminal by 28 & 29 Vict. c. 18, s. 8.

Comparuit ad diem (*he appeared at the day*).

Compassing [fr. *compasser*, Fr., to encircle, *con*, with, and *passus*, a step, Lat.], imagining or contriving.

Compaternity, spiritual affinity.

Compendia sunt dispendia. Co. Litt. 305.—(Abbreviations are detriments.)

Compellativus, an adversary or accuser.—*Leg. Athel.*

Compensatio criminum (*Compensation of offences*), a term used by the canonists. Where husband and wife had both been guilty of adultery, there was, according to the doctrine of the Canon Law, a *compensatio*

criminum, i.e., the guilt of the one was neutralised by that of the other, and both were restored to the position of innocent persons. See DIVORCE.

Compensation, making things equivalent, satisfying or making amends, a reward for the apprehension of criminals; also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected under the Lands Clauses Consolidation Act, 1845. See *Lloyd* or *Ingram* on Compensation. Also (in Scotch Law) a sort of right by set-off or stoppage, whereby a person who has been sued for a debt demands that the debt may be compensated with what is owing to him by the creditor.

Compertorium, a judicial inquest in the Civil Law, made by delegates or commissioners to find out and relate the truth of a cause.—*Paroch. Antiq.* 575.

Complainant, one who urges a suit or commences a prosecution against another.

Complaint, statement of. See STATEMENT OF CLAIM.

Complice, one who is united with others in an ill-design; an associate; a confederate; an accomplice.

Compos mentis (*sound of mind*).

Composition, an amicable arrangement of a law-suit.

2. An agreement between a parson, patron, or ordinary, and the owner of lands, that such lands shall for the future be discharged from payment of tithes, by reason of some land or other real recompense given to the parson in lieu and satisfaction thereof. No real composition, however, since the 13 Eliz. c. 10, is, in general, good for any longer term than three lives, or twenty-one years, though made by consent of the patron and ordinary. But by 2 & 3 Wm. IV. c. 100, s. 2, every composition for tithes which had then been made or confirmed by the decree of any Court of Equity in England, in a suit to which the ordinary, patron, and incumbent were parties, and which had not been since set aside or departed from, is valid in law.

3. Also an agreement made between an insolvent debtor and his creditors, by which the latter accept a part of their debts in satisfaction of the whole. Deeds of composition, inspectorship, and arrangement, if executed or assented to by the majority of the creditors representing three-fourths in value, were made binding on the rest of the creditors, on the observance of certain formalities, by the Bankruptcy Act, 1861, 24 & 25 Vict. c. 104, ss. 192—8.

For the many decisions on this enactment, see De Gex, Holland, or Griffiths, on Composition Deeds. It was repealed by the Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, which, by sections 126—7, made elaborate provisions for the acceptance of a composition by creditors without recourse to proceedings in bankruptcy, but the Bankruptcy Act, 1883, has repealed these provisions, and abolished 'liquidation' altogether as a statutory procedure. As to the 'Deeds of Arrangement' which followed upon this Act, see ARRANGEMENTS.

Compositio mensurarum, the title of an ancient ordinance for measures, not printed.

Compost, several sorts of soil or earth and other matters mixed, in order to make a fine kind of mould for fertilising lands.

Compound householder. The payment of rates has always been one of the ingredients in the qualification for the parliamentary franchise; but modern statutes have enabled the owners of small houses to pay the rates for the occupiers and receive a composition for so doing. To prevent the occupiers being disfranchised by this process, it was enacted that they might claim to be rated themselves, and such householders so claiming became commonly known as 'compound householders,' as appears from the title to the Act, 14 & 15 Vict. c. 14.

Compound interest, interest upon interest, i.e., when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal.

Compound spirits, Act as to the warehousing of, 28 & 29 Vict. c. 98.

Compounding, arranging, coming to terms; compounding felony is where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon an agreement not to prosecute; this offence is denominated *theftbote*, and it is punishable by fine and imprisonment. (See *Reg.* v. *Burgess*, 16 *Q. B. D.* 141.) It is no offence to compound a misdemeanour (unless the offence is virtually an offence against the public), for the party injured may maintain an action to recover compensation in damages. And compounding offences only cognizable before magistrates on summary jurisdiction is not within 18 Eliz. c. 5. Corruptly to take reward for helping a person to stolen goods, without bringing the offender to justice, is felony; and to advertise a reward for the return of things stolen, by an advertisement representing that no questions will be asked, etc., incurs a penalty of 50*l.* by the Larceny Act, 1861, 24 & 25 Vict. c. 96, ss. 101, 102, not, however, to be sued for without the leave of the Attorney-General. See COMMON

Informer. Penal actions by common informers may be compounded by leave of the Court; this leave of the Court, however, is not necessary in actions by the party grieved. The defendant must have pleaded.

Comprint, a surreptitious printing of another bookseller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. See Copyright.

Compromise, an adjustment of claims in dispute by mutual concession; also a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitrators. As to authority of counsel to compromise an action, see *Swinfen* v. *Swinfen*, 18 *C. B.* 485; and of solicitor, see *Fray* v. *Vowles*, 28 *L. J. Q. B.* 232.

Compromissarii sunt judices. Jenk. Cent. 128.—(Arbitrators are judges.)

Compromissum, a submission to arbitration.—*Can. Law.*

Comptroller, one who observes and examines the accounts of collectors of public money; an officer of the royal household.

Comptroller in Bankruptcy, an officer appointed under the repealed Bankruptcy Act, 1869, ss. 55—58, for the purpose of receiving and examining the accounts of trustees.

Comptrollers of the Hanaper, officers of the Court of Chancery; their offices were abolished by 5 & 6 Vict. c. 103.

Compurgator, one who by oath justifies another's innocence. The *compurgatores* mentioned in Anglo-Saxon records, have been supposed to be the origin of trial by jury. —*Comyn's Abr.*—*Du Cange.*

Compute, rule to, abolished by C. L. P. Act, 1852, s. 52.

Computo, a writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Statute of Westminster II., c. 12.—*Reg. Orig.* 135.

Conacre, the payment of wages in land, the rent being worked out in labour at a money valuation.—*Irish Practice.*

Conatus quid sit, non definitur in jure. 2 Buls. 277.—(What an attempt is, is not defined in law.)

Concealers, such as were used to find out concealed lands, i.e., such lands as are privily kept from the king by common persons, having nothing to show for their title or estate therein.—39 *Eliz.* c. 23.

Concealing a birth, a misdemeanour. See 24 & 25 Vict. c. 100, s. 60.

Concealing documents of title to lands or testamentary instruments. These offences are felonies, 24 & 25 Vict. c. 96, ss. 28, 29, and 25 & 26 Vict. c. 67, s. 44.

Concealment, i.e., *suppressio veri*, to the injury or prejudice of another. This must amount, in order to be deemed a fraud, to the suppression or non-disclosure of facts, which one, under the circumstances, is bound, both legally and equitably, to disclose to another, the latter having an undoubted right to be put in possession of such facts.

There is a material distinction between circumstances which are intrinsic, forming the very ingredients of a contract, and circumstances which are extrinsic, forming no part of it, although perhaps offering inducements to enter into it, or affecting the value of the thing contracted for. As to the former, the caution *caveat emptor* should be heeded, for, unless there be some artifice to disguise the subject of the contract, or some warranty as to its quality, a vendee is bound by the sale although there may exist extrinsic defects in it, known only to the vendor, which greatly affects its worth.

For leading cases, see *St. Leonards' Vendors and Purchasers of Estates*, Introd. 1—7.

Concessi (*I have granted*), a word of frequent use in conveyances. By 8 & 9 Vict. c. 106, s. 4, the word 'grant' in a deed executed after 1st October, 1845, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as it may, by force of any Act of Parliament, imply a covenant.

Concessimus (*we have granted*).

Concessio per regem fieri debet de certitudine. 9 Co. 46.—(A grant by the king ought to be made from certainty.)

Concessio versus concedentum latam interpretationem habere debet. Jenk. Cent. 279. —(A grant ought to have a liberal interpretation against the grantor.)

Concessit solvere (*he granted and agreed to pay*), an action of debt upon a simple contract. It lies by custom in the Mayor's Court, London, and Bristol City Court. See *Candy's Mayor's Court Practice.*

Concessor, a grantor.

Concilium, a court; a time and place of meeting. Prior to the *Reg. Gen. of T. T.* 1853 (r. 15), a motion or rule for a *concilium* was required before the argument of a demurrer.

Concionatores, common council men, freemen.

Concluded, prevented from.

Conclusion, a binding act; also the end of a pleading or conveyance.

Concord, an agreement between parties, who intend to levy a fine of lands one to the other, how and in what manner the lands shall pass; it was the foundation and substance of the fine taken and acknowledged by the party before one of the judges of the Court of Common Pleas, or before Commis-

sioners in the country; also an agreement made between two persons, one of whom has a right of action against the other. It is of two kinds, concord executory, and concord executed.—*Plowd.* 5, 6, 8.

Concordat, a treaty or public act of agreement between the Pope and any prince, relative to some collation of benefices.

Concordiâ parvæ res crescunt et opulentiâ lites. 4 Inst. 74.—(Small means increase by concord and litigations by opulence.)

Concubaria, a fold, pen, or place where cattle lie.—*Cowel.*

Concubeant, lying together.

Concubinage, an exception against a woman suing for dower, on the ground that she was a concubine and not the wife.—*Brit.* c. 107.

Concurrent, acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous. As to concurrent writs of summons, see R. S. C. 1883, Ord. VI. See WRIT OF SUMMONS.

Concurrent jurisdictions, the jurisdiction of several different tribunals, both authorised to deal with the same subject-matter at the choice of the suitor.

Condescendence, a part of the proceedings in a cause, setting forth the case of the pursuer or plaintiff.—*Scotch Law.*

Condiction, a repetition.

Condition, a restraint annexed to a thing, so that by the non-performance the party to it shall receive prejudice and loss; and by the performance, commodity, or advantage; or it is that which is referred to an uncertain chance, which may or may not happen.

There are many kinds of conditions, but the following are the most important:—

A *condition in a deed*, or *express*, which is joined by express words to a feoffment, lease, or other grant, as if a person make a lease of lands to another, reserving a rent to be paid at a certain day, upon condition that if the lessee fail in payment at the day, then it shall be lawful for the lessor to enter.

A *condition in law*, or *implied*, as when a person grants another an office, as that of keeper of a park, steward, bailiff, etc., for a term of life; here, though there be no condition expressed in the grant, yet the law implies one, viz., that if the grantee do not justly execute all things belonging to the office, it shall be lawful for the grantor to discharge him from his office.

A *condition precedent* is when an estate is granted to one for life, upon condition that if the grantee pay to the grantor a certain sum of money at such a day, then he shall have the fee simple; in this case the condition precedes the estate in fee, and on performance thereof gains the fee simple.

A *condition subsequent* is when a man grants to another his estate, etc., in fee, upon condition that the grantee shall pay him at such a day a certain sum, or that his estate shall cease: here the condition is subsequent, and following the estate, and upon the performance thereof, continues and preserves the same; so that a condition precedent gets and gains the thing or estate made upon condition, by the performance of it, whereas a condition subsequent keeps and continues the estate by the performance of the condition.—*Termes de la Ley.*

Condition inherent is that which descends to the heir, which the land granted, etc.

Condition collateral is that which is annexed to any collateral act.

Conditions are, likewise, *affirmative*, which consists of doing an act; *negative*, which consists of not doing an act; *restrictive*, for not doing a thing; *compulsory*, as that the lessee shall pay rent, etc.; *single*, to do one thing only; *copulative*, to do divers things; and *disjunctive*, where one thing of several is required to be done.—*Shep. Touch.* 117; 2 *Com. Dig.*, tit. '*Condition;*' and see CONDITIONS OF SALE.

Conditio beneficialis, quæ statum construit, benignè secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, strictè, secundum verborum proprietatem accipienda. 8 Co. 90.—(A beneficial condition, which creates an estate, ought to be construed favourably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.)

Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse, confertur. Co. Litt. 201.—(It is called a condition, when something is given on an uncertain event, which may or may not come into existence).

Conditio illicita habetur pro non adjectâ.—(An unlawful condition is deemed as not annexed.)

Conditio præcedens adimpleri debet priusquam sequatur effectus. Co. Litt. 201.—(A condition precedent must be fulfilled before the effect can follow.)

Conditional fee, an estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body in exclusion of heirs female, whether lineal or collateral. It was called a conditional fee, by reason of the condition expressed or implied in the donation of it, that if the donee died without such particular

heirs, the land should revert to the donor. But on the passing of the Statute of Westminster II., commonly called the Statute *De Donis*, the judges determined that the donee had no longer a conditional fee-simple, which became absolute the instant issue was born, that they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail, and vesting in the donor the ultimate fee-simple of the land expectant on the failure of issue, which expectant estate is what we now call a reversion. And hence it is that tenancy in fee-tail is by virtue of the Statute *De Donis*. —2 *Bl. Com.* 112.

Conditional legacy, a bequest whose existence depends upon the happening or not happening of some uncertain event, by which it is either to take place or to be defeated.—1 *Rop. Leg.*, 3rd ed., 645.

Conditional limitation, partakes of the nature both of a condition and a remainder. At the Common Law, whenever either the whole fee or a particular estate, as an estate for life or in tail, was first limited, no condition or other quality could be annexed to this prior estate, which would have the double effect of defeating the estate, and passing the lands to a stranger, for as a remainder it was void, being an abridgment or defeasance of the estate first granted, and as a condition it was void, as no one but the donor or his heirs could take advantage of a condition broken; and the entry of the donor or his heirs unavoidably defeated the livery upon which the remainder depended. On these principles it was impossible by the old law to limit by deed, if not by will, an estate to a stranger upon any event which might abridge or determine an estate previously limited. But the expediency of such limitations, assisted by the revolution effected by the Statute of Uses, at length established them, in spite of the maxim of law that a stranger cannot take advantage of a condition. These limitations are now become frequent, and their mixed nature has given them the name of conditional limitations; they so far partake of the nature of conditions, as they abridge or defeat the estates previously limited, and they are so far limitations, as upon the contingency taking effect the estate passes to a stranger. Such is the limitation to A. for life, in tail or in fee, provided that when C. returns from Rome, it shall henceforth remain to the use of B. in fee.—2 *Bl. Com.* 156.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium. Lofft. 644.—(Some conditions are odious; but those chiefly which are against marriage and commerce.)

Conditions of sale, the terms set forth in writing, upon which an estate or interest is to be sold by public auction. Conditions of sale will be construed, so as to collect the meaning of the parties, without encumbering them with the technical meaning of words; for, as Lord Hardwicke declared, 'there is no magic in words.' But the conditions should be accurate, for they cannot be contradicted by parol at the sale; 'the babble of the auction room,' as Lord Eldon termed it, being inadmissible as evidence, and this although the purchaser, by the written agreement, bind himself to agree by the conditions and declarations made at the sale. If the conditions require alteration, they should be so altered in writing before the sale.—*St. Leon. V. & P.* 11; *Dart's V. & P.* c. iv.

The Conveyancing Act, 1881, 44 & 45 Vict. c. 41, s. 3, applies certain conditions of sale to all contracts of sale, unless the contrary appears.

Condonation, a pardoning or remission. In cases of adultery it is forgiveness, legally releasing the injury.—20 & 21 *Vict.* c. 85, s. 30; *Keats* v. *Keats*, 28 *L. J. P. & M.* 57.

Condone, to make condonation of. See last TITLE.

Conduct-money, money paid to a witness for his travelling expenses.

Conductio, a hiring.

Coney [fr. *cuniculus*, Lat.], a rabbit. See RABBIT.

Confederacy, a combination of two or more persons to do some damage or injury to another, or to commit some unlawful act.

Confederation, a league or compact for mutual support, particularly of princes, nations, or states.

Conference, a meeting between a counsel and solicitor to advise on the cause of their client.

Confessing error, the affirmative plea to an assignment of error.

Confessio, facta in judicio, omni probatione major est. Jenk. Cent. 102.—(A confession made in judgment is greater than all proof.)

Confession and avoidance, plea of, a plea in bar, admitting the facts alleged in the declaration to be true, but showing some new facts, tending to obviate their legal effect. These pleas were distinguished (in reference to their subject-matter) as pleas in justification, or excuse, or as pleas in discharge. The former class of pleas showed some justification of or excuse for the matter charged in the declaration: those of the latter some discharge or release. All matters in confession and avoidance must have been specially pleaded.—*Reg. Gen. H. T.* 1853, r. 8. Pleas in confession and avoidance have technically

fallen into desuetude since the passing of the Judicature Acts, 1873, 1875. See STATEMENT OF DEFENCE.

Confession by culprit, the acknowledgment by a criminal of the offence charged against him when called upon to plead to the indictment. The criminal may confess the offence openly in court, and submit himself to the judgment of the law, so that the confession be of his own accord, without any threats or extremity used; and sometimes he confesses the indictment to be true, and then becomes an approver or accuser of others, who are guilty of the same offence for which he is indicted or of other offences with him. There was a third sort of a confession, formerly made by an offender in felony, not in court before the judge, but before the coroner in a church or other privileged place, upon which the offender, by the ancient law of the land, was to abjure the land.—3 *Inst.* 129.

Confession to a priest. The English law does not recognise the duty of a priest (whether Roman Catholic or Anglican) to keep secrets revealed to him in his religious character; but some judges have refused to extort such secrets, and the practice of the law on this subject is very uncertain.

Confession, Judgment by. See COGNOVIT.

Confession of defence. Where defendant alleges a ground of defence arising since the commencement of the action, the plaintiff may deliver confession of such defence and sign judgment for his costs up to the time of such pleading unless it be otherwise ordered. (R. S. C. 1883, Ord. XXIV., Rule 3.)

Confession of Plea. A plea containing a defence arising after the commencement of an action, or after the last pleading, might be confessed by the plaintiff.—*Reg. Gen. H. T.* 1853, rr. 22, 23. See previous title.

Confesso, Bill taken pro, an order which the Court of Chancery made, when the defendant did not file an answer, that the plaintiff might take such a degree as the case made by his bill warranted. For the practice as to taking bills *pro confesso*, see Consol. Ord. 1860, Ord. XXII.; *Smi. Ch. Pr.* 266. Now obsolete. See DEFAULT; PLEADING.

Confessus in judicio pro judicato habetur, et quodammodo suâ sententiâ damnatur. 11 Co. 30.—(A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.)

Confidential communication. See PRIVILEGED COMMUNICATION.

Confinement, Solitary. See SOLITARY CONFINEMENT.

Confirmatio Chartarum, the 25 Edw. I., A.D. 1297. This statute, being in the form of a charter, was sealed with the King's Great Seal, at Ghent, in Flanders, on Nov. 5th, as appears by a memorandum upon the roll. It re-enacts Magna Charta, with the addition of giving that security to personal property which Magna Charta gave to personal liberty, and must be referred to for the terms of Magna Charta, in the 'Statutes of the Realm' and the 'Revised Statutes.'

Confirmation, a species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased. The operative words are 'ratified and confirmed;' though, for safety, it is usual and prudent to insert the words, 'given and granted.' Estates which are void cannot be confirmed, but only those which are avoidable.—*Watkin's Conv.* 321. A confirmation does not strengthen a void estate; for a confirmation may make a voidable or defeasible estate good, but it cannot work upon an estate that is void at law.—*Co. Litt.* 295 b.

Confirmation, the ratification by the archbishop of the election of a bishop by dean and chapter under the King's letter missive prior to the investment and consecration of the bishop by the archbishop, 25 Hen. VIII. c. 20. It is undecided whether this ceremony be, in theory, ministerial or judicial, i.e., whether the archbishop can refuse to confirm: in practice, it has been only ministerial for two centuries. See *The Queen* v. *The Archbishop of Canterbury*, 11 *Q. B.* 483.

Confirmation and Probate Act, 21 & 22 Vict. c. 56, amended by 22 Vict. c. 30.—Consult *Coote on Probate* or *Browne.*

Confirmare est id firmum facere quod prius infirmum fuit. Co. Litt. 295.—(To confirm is to make firm that which was before infirm.)

Confirmare nemo potest priusquam jus ei acciderit. 10 Co. 48.—(No person can confirm before the right shall fall to him.)

Confirmat usum qui tollit abusum. Moore, 764.—(He confirms a use who removes an abuse.)

Confirmatio est nulla ubi donum præcedens est invalidum. Moore, 764; and Co. Litt. 295.—(There is no confirmation where the preceding gift is invalid.)

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Co. Litt. 295 b.—(Confirmation supplies all defects, though that which had been done was not valid at the beginning.)

Confiscation [fr. *confiscor*, from *fiscus*, Lat., which signifies, metonymically, the emperor's treasure], the condemnation and adjudication of goods or effects to the public treasury, as the bodies and effects of criminals, traitors, etc.

Confitens reus, an accused person who admits his guilt.

Conflict of laws. In the case where a suit is brought in one country, and the parties, or one of them (or the subject-matter of the suit), belongs more or less to another, and the laws of the two countries upon the subject are at variance, there is said to be a conflict of laws. See LEX LOCI CONTRACTÛS; and also the case of *Simonin* v. *Mallac*, 27 *L. J. N. S. Prob. & Mat.* 97, where two French persons came to England for the express purpose of celebrating a marriage which would have been void if celebrated in their own country. 'Either nation may refuse to surrender its laws to those of the other, and if either is guilty of any breach of the *comitas* or *jus gentium*, that reproach shall attach to the nation whose laws are least calculated to ensure the common benefit and advantage of all.' See *Story's Conflict of Laws.*

Conformity, Bill of. When an executor or administrator found the affairs of his testator or intestate so much involved that he could not safely administer the estate, except under the direction of the Court of Chancery, he filed this bill against the creditors generally for the purpose of having all their claims adjusted, and a final decree settling the order and payment of the assets. This bill was so called, probably because the executor or administrator in such case undertook to conform to the decree, or the creditors were compelled by the decree to conform thereto. —1 *Story's Eq. Jur.* 440.

Confrairie, a fraternity, brotherhood, or society.

Confrères, brethren in a religious house, fellows of one and the same society.

Confusion, a mode of extinguishing a debt, in the French law, by the concurrence in the same person of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer. —*Pothier on Oblig.* by *Evans*, n. 606—609.

Confusion of Boundaries, was a jurisdiction of equity, concurrent with the Common Law. The Civil Law was far more provident than ours upon the subject of boundaries. It considered that there was a tacit agreement or duty between adjacent proprietors to keep up and preserve the boundaries between their respective estates, and it enabled all persons having an interest to bring a suit to have the boundaries between them settled; and this, whether they were tenants for years, usufructuaries, mortgagees, or proprietors. The action was called *actio finium regundorum;* and if the possession were also in dispute, that might be ascertained and fixed in the same suit, and indeed was incident to it. Equity adopts this general rule, not to entertain jurisdiction in cases of confusion of boundaries upon the ground that the boundaries are in controversy, but to require that there should be some equity superinduced by the act of the parties; such as some particular circumstances of fraud, or some confusion, where one person has ploughed too near another, or some gross negligence, omission, or misconduct on the part of persons whose special duty it is to preserve or perpetuate the boundaries. Where there is an ordinary legal remedy there is certainly no ground for the interference of equity, unless some peculiar equity supervenes which the law does not take notice of or protect.—1 *Story's Eq. Jur.* 495.

Confusion, Property by. Where goods of two persons are so intermixed that the several portions can no longer be distinguished; if the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his money, corn, or hay, with that of another man, without his approbation or knowledge, or cast gold in like manner into another's melting-pot or crucible, our law allows no remedy in such a case, but gives the entire property without any account to him whose original dominion or property is invaded, and endeavoured to be rendered uncertain without his consent.—2 *Bl. Com.* 405. See also *Vin. Abr. Justification* (*B*) and *Instit. of Justin.* l. ii. tit. 1, ss. 27—34.

The general rule, that, as against an agent who has mixed the property of his employer with his own, so as to render it undistinguishable, the whole may, both at Law and in Equity, be taken to be the property of the employer, is well settled; but the same rule does not, in all cases, hold against the creditors of such agent: for instance, if an agent pay money belonging to his employer into his own banking-house, and to his general account, this money may not be distinguishable; but should the agent become bankrupt, the whole sum which appears to be due to him from the bankers will go to his assignees, and his employer can only come in as a general creditor under the bankruptcy. So, if the bankers had an account with the agent by way of set-off, that set-off would equally affect the money of his employer paid into the agent's account, as it would the agent's own money, supposing the bankers to have no notice, displacing their equity.—*Ex parte Townsend*, 15 *Ves.* 470; *Massey* v. *Banner*, 1 *J. & W.* 248.

Congeable [fr. *congé*, Fr., leave], lawful, done with permission.

Congé d'Accorder, leave to accord or agree. —8 *Edw. I.*

Congé d'Eslire, d'Elire (*leave to choose*). The Queen's license or permission sent to a dean and chapter to proceed to the election of a bishop, when a see becomes vacant.

Congregationalist, a name for the sect formerly called Independents.

Congress, an assembly of envoys, commissioners, deputies, etc., from different courts, who meet to concert measures for their common good, or to adjust their mutual concerns.

Congress of the United States of America, the assembly of senators and representatives of the several states of North America, forming the legislature of the United States. It consists of a Senate and a House of Representatives, each constituting a distinct and independent branch. The House of Representatives is chosen every second year by the people of the several states. The Senate is composed of two senators from each state, who are chosen by the legislature of the state for six years. They are divided into three classes, so that one-third thereof is or may be changed by a new election every second year.

Congressus, the extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused.—*Causes Célèbres*, 6, 188.

Conjoints, persons married to each other.

Conjugal rights, the right which husband and wife have to each other's society, comfort, and affection. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce court, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the Court will decree restitution of conjugal rights (20 & 21 Vict. c. 85, s. 17), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order for periodical payments by the husband to the wife.—*Matrimonial Causes Act*, 1884, 47 & 48 Vict. c. 68. Nor can it be enforced by the act of either party, as was held by the Court of Appeal in the case of a husband who had seized and detained his wife by force, in *Reg.* v. *Jackson* [1891], 19 B. 671. As to Scotland see 24 & 25 Vict. c. 86, and 37 & 38 Vict. c. 31.

Conjuratio [fr. *conjuro*, Lat.], an oath.

Conjuration, a compact made by persons combining by oath to do any public harm; it was more especially used for the having personal conference with the devil or some evil spirit to know any secret or effect any purpose. The difference between *conjuration* and *witchcraft* was said to be, that a person using the one endeavoured, by prayers and invocations, to compel the devil to say or do what he commanded him; the other dealt by friendly and voluntary confidence with the devil or familiar, in lieu of blood or other gift offered. Both differed from *enchantment* or *sorcery*—the latter was supposed to be personal conferences with the devil, the former were but medicines and ceremonial form of words, usually called charms, without apparition.—*Cowel.*

Connivance, consent, express or implied, by one spouse to the adultery of the other. If a petitioner be found guilty of connivance, the Court will not decree dissolution of the marriage.—20 & 21 *Vict.* c. 85, ss. 29, 30.

Conquest, [fr. *conquerir*, Fr., to acquire; *conquiro*, Lat., to seek for], the feodal term for purchase.

Consanguineo. See COSENAGE.

Consanguineus est quasi eodem sanguine natus. Co. Litt. 157.—(A person related by consanguinity is, as it were, sprung from the same blood.)

Consanguineus frater, a brother by the father's side; in contradistinction to *frater uterinus*, the son of the same mother.

Consanguinity, or **kindred**, the connection or relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. Lineal is that which subsists between persons, of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral agree with the lineal in this, that they descend from the same stock or ancestor, but differ in this, that they do not descend one from the other. —2 *Bl. Com.* 202.

Conscience, courts of, tribunals for the recovery of small debts, constituted by acts of parliament in the city of London and other towns. See 5 & 6 Wm. IV. c. 94. The ordinary constitution of these courts, which were generally for causes of debt to the amount of 40*s.* only, but often to the amount of 5*l.*, was to examine in a summary way, and without injury, by the oath of the parties, or other witnesses, and make such order therein as was consonant to equity and good conscience.—7 & 8 *Vict.* c. 96. The County Courts have superseded them.

Conscientia dicitur a con *et* scio, *quasi scire cum Deo.* 1 Co. 100.—(Conscience is called from *con* and *scio*, to know, as it were, with God.)

Consecratio est periodus electionis; electio est præambula consecrationis. 2 Rol. R. 102.

—(Consecration is the termination of election; election is the preamble of consecration.)

Consecrate, to dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop. See BISHOP.

Consensus est voluntas plurium ad quos res pertinet, simul juncta. Lofft. 514.—(Consent is the conjoint will of many persons, to whom the thing belongs.)

Consensus facit matrimonium. (Consent constitutes marriage.)

Consent is absolutely necessary to matrimony, and therefore persons *non compotes mentis,* cannot enter into this, or indeed any other contract. See NULLITY.

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles. 6 Co. 22.—(Consent, and not cohabitation, constitutes nuptials or marriage, and persons cannot consent before marriageable years.)—the 'anni nubiles' are 14 for a boy, and 12 for a girl.

Consensus tollit errorem. Co. Litt. 126.—(Consent [acquiescence] removes mistake.)

Consent, an act of reason accompanied with deliberations, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things—a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.—1 *Story's Eq. Jur.* 186.

Consentientes et agentes pari pœnâ plectantur. 5 Co. 80.—(Those consenting and those perpetrating are embraced in the same punishment.)

Consent-rule, a superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession.

Consequentiæ non est consequentia. Bac.—(The consequence of a consequence exists not.)

Consequential damages, those losses or injuries which follow an act, but are not direct and immediate upon it; an illustration of which is afforded by the leading case of *Scott* v. *Shepherd,* 1 *Sm. L. C.,* which see. See also DAMAGES.

Conservancy of the Thames. The conservation of the River Thames between Staines, in Middlesex, and Tenleete, in Kent, had from time immemorial been exercised by the Corporation of London; and after being the subject of many statutes (for which see the preamble of the Act 20 & 21 Vict. c. 147), has now been placed by this Act under the control of a body of conservators, forming a body corporate, on whom an extended jurisdiction has been conferred.—27 & 28 *Vict.* c. 113. See also the Thames Preservation Act, 1885, 48 & 49 Vict. c. 76.

Conservative, the name of a political party, first assumed in 1830.—xliii. *Quart. Rev.* 276.

Conservator, a protector, preserver, or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, etc.

Conservators of the peace, officers appointed by the common law for the maintenance of the public peace. Of these, some had and still have this power annexed to other offices which they hold, others had it merely by itself, and were thence called *custodes* or *conservatores pacis.* Those that were so, *virtute officii,* still continue; but the latter sort are superseded by the justices of the peace first established in the reign of Edw. III.

Conservators of truce and safe conducts, officers appointed at ports to hear and determine questions relating to the breaking of truce and safe conducts, and the abetting and receiving truce breakers, which offence was, in affirmance and support of the law of nations, declared to be treason. It was enacted by 18 Hen. VI. c. 4, that if any of the King's subjects attempt or offend upon the sea, or in any port within the King's obeisance, against any stranger in amity, league, or truce, or under safe conduct, and especially by attacking his person, or spoiling him, or robbing him of his goods, the Lord Chancellor, with any of the justices of either the King's Bench or Common Pleas, should cause full restitution and amends to be made to the party injured.

Consideratio curiæ, the judgment of the Court.

Consideration, the price, motive, or matter of inducement of a contract, which must be lawful in itself.

The consideration is the very life of a simple contract or parol agreement; while a specialty, or contract under seal, does not require a consideration to make it obligatory at law, the law always presuming a sufficient consideration, which the parties, except in special cases, are estopped from denying. The law, then, not only requires a consideration in the case of a simple contract (under which term is included all contracts not under seal, whether oral or written), but that it should be valuable—i.e., a legal

consideration emanating from some injury or inconvenience to the one party, or from some benefit to the other party. A good consideration, i.e., an equitable consideration, founded upon mere love, affection, or gratitude, will not support a contract.

Considerations divide themselves into (1) valuable; and (2) insufficient. *Valuable* may be thus classed:—

(*a*) *Benefit and injury.* The principal requisite, and that which is the essence of every consideration is, that it should create some benefit to the party promising, or some trouble, prejudice, or inconvenience to the party to whom the promise is made. It is not necessary that the consideration and promise should be equivalent in actual value, for it would be impossible precisely to determine whether, in a given case, the consideration were adequate, without a psychological investigation into the motives of the parties. If the consideration, however, be so insufficient as to 'shock the conscience,' equity would quash the contract, upon the ground that such great inequality betokens fraud or undue advantage on the one side, or mental incompetency on the other.

(*β*) *Forbearance*, for a certain unreasonable time to institute a suit upon a well-founded claim, or even upon one which is doubtful, but not upon one utterly unfounded, is sufficient, since it is a benefit to the one party, and a prejudice to the other. If the time of forbearance be stated, it must be a reasonable time, and an agreement to forbear *per breve aut paululum tempus*, or *pro aliquo tempore*, will not be sufficient, inasmuch as the party promising may, in such case, sue immediately after the promise is made.

(*γ*) *Assignment of a chose in action*, unless it be void on account of maintenance. Assignments of choses in action are void at common law, unless the original debtor expressly promise to pay the assignee, or unless the assignment be made with his assent, in which case the law implies a promise from him to the assignee, the consideration of which is the discharge of liability to the assignor, in respect of the claim. See CHOSES IN ACTION.

(*δ*) *Mutual promises* are concurrent considerations, and will support each other if they be made simultaneously, unless one or the other be void.

Insufficient considerations may be divided into:—

(*a*) *Gratuitous*, which are void for want of consideration; for, however obligatory they may be in morals or in honour, inasmuch as they are not founded upon an injury or deprivation to the promisee, or a benefit to the promissor, they are not regarded by the law as legal and valuable considerations.

(*β*) *Illegal and impossible consideration.* A contract may be illegal, because it contravenes the principles of the common law, or the special requisitions of a statute. The former illegality exists whenever the consideration is founded upon a transaction which violates public policy or morality:—as a contract to commit, conceal, or compound a crime; a contract for illicit cohabitation; or a contract in fraud of the rights and interests of third parties. The illegality created by statute exists when the act is either expressly prohibited, or when the prohibition is implied from the nature and object of the statute. A contract founded upon an impossible contract is void; for the law will not compel a man to attempt to do that which is not within the limits of human capacity. *Lex neminem cogit ad vana aut impossibilia.*

(*γ*) *Moral consideration* is not alone a sufficient legal consideration to support either an express or implied promise; for the law, although it will not suffer any immorality, cannot undertake to enforce every promise which a man of strict honour and integrity would feel himself bound to fulfil. Attempts have been made to make an exception to this rule in cases where the consideration would be legal but for the interposition of some particular statute (see *Atkins* v. *Hill*, *Cowp.* 288; *Flight* v. *Reed*, 9 *Jur. N. S.* 1016, and the cases referred to therein), but these cases are on the boundary line of the law, and the decisions are of doubtful soundness.

(*δ*) *Executed consideration.* A consideration, in regard to the time when it operates, is either—1st, *executed*, i.e., already performed before the making of the defendant's promise, and this must have been at the request of the promissor, otherwise it will not support a promise; 2nd, *executory*, or something to be done after the promise; 3rd, *concurrent*, as in the case of mutual promises; and 4th, *continuing*, i.e., executed in part only. The three last classes are sufficient to support a contract not void for other reasons. —*Story on Contracts*, 71.

(*ε*) *Considerations moving from third persons.* It is a general rule that in cases of simple contract, if one party make a promise to another for the benefit of a third, as no consideration moves from such third person, it is only the party to whom it is made, and not the party for whose benefit it is made who may maintain an action upon it.

Consideratum est per curiam (*it is considered by the Court*), the formal and ordinary commencement of a judgment.

Consignation [fr. *consigno*, Lat., to write down], the deposit of a thing owed with a third person, under the authority of the Court.—*Civil Law.*

Consignment, the sending of goods to another for sale or purchase; also the goods themselves so sent. He who consigns the goods is called the *consignor*, and the person to whom they are sent is called the *consignee.*

Consilia multorum quæruntur in magnis. 4 Inst. 1.—(The counsels of many are required in great things.)

Consistory Court, the *prætorium* or tribunal of every diocesan bishop, held in their several cathedrals for the trial of all ecclesiastical causes arising within their jurisdiction. The bishop's chancellor, or his commissary, is the judge, and from his sentence an appeal lies, by virtue of 24 Hen. VIII. c. 12, to the archbishop of each province respectively.—2 *Br. & Had. Com.* 441.

Consolato del mare, il, a code of sea-laws compiled by order of the ancient kings of Arragon.

Consolidated Fund of the United Kingdom, a repository of public money, which now comprises the produce of customs, excise, stamps, and several other taxes, and some small receipts from the royal hereditary revenue, surrendered to the public use; and constitutes almost the whole of the public income of the United Kingdom of Great Britain and Ireland. This fund is pledged for the payment of the whole of the interest of the national debt of Great Britain and Ireland; and besides this is liable to several other specific charges imposed upon it at various periods, by Act of Parliament, such as the civil list, and the salaries of the judges and ambassadors and other high official persons; after payment of which the surplus is to be indiscriminately applied to the service of the United Kingdom, under the direction of Parliament.—1 *Br. & Had. Com.* 391. See 56 *Geo. III.* c. 98; 14 & 15 *Vict.* c. 3, s. 101; 19 & 20 *Vict.* c. 59; 29 & 30 *Vict.* c. 39, s. 46; 32 & 33 *Vict.* c. 93; 36 & 37 *Vict.* cc. 56, 57; and 38 & 39 *Vict.* c. 78. And see TREASURY CHEST FUND.

Consolidating actions. If several actions between the same parties were brought, and were pending for the same cause, or substantially so, the Court might stay the proceedings in all but one. And if two or more actions were brought by the same plaintiff, at the same time, against the same defendant, for causes of action which might have been joined in the same action, the Court or a judge, if they deemed the proceeding vexatious or oppressive, would in general compel the plaintiff to consolidate them. *Chitty's Arch. Pr.*, 14th ed., 407. Under the rules of the Supreme Court, actions may be consolidated, by order as before (R. S. C. 1883, Ord. XLIX., Rule 8).

Consolidation, in the civil law, the uniting the possession, occupancy, or profits, etc., of land with the property, and *vice versâ;* in the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent; in the statute law, the fusing many Acts of Parliament into one.

Consolidation Acts. Acts by which many acts upon the same subject are reduced into one, usually with amendments. Of such a character are the Merchant Shipping Act of 1854, the Larceny Act, and other Criminal Law Consolidation Acts of 1861, the Stamp Act of 1870, the Public Health Act of 1875, the Factory and Workshop Act of 1878, the Municipal Corporations Act of 1882, the Sheriffs Act of 1887, the County Courts Act of 1888, the Arbitration Act of 1889, the Factors Act of 1889, the Lunacy Act of 1890, and the Stamp Act of 1891. Compare the title CODE.

Consolidation of Mortgages. Mortgages on separate properties by one mortgagor stand as an entire security to the mortgagee, who has a right in equity to compel the mortgagor to redeeem all the other mortgages if he seeks to redeem one of them. This right however, is abolished by s. 17 of the Convey ancing Act, 1881, but only in cases where a contrary intention is not expressed in the mortgage deeds or one of them, and where the mortgages or one of them are or is made after the 31st December, 1881. 'Consolidation' must not be confounded with 'Tacking,' which arises out of successive mortgages upon the same estate, whereas consolidation arises out of separate mortgages on different estates.

Consols, funds formed by the consolidation (of which word it is an abbreviation) of different Government annuities, payable by way of interest to persons who had lent money to the Government on the security of different taxes, or for the maintenance of different parts of the public service. And see CONVERSION OF STOCK; FUNDS.

Conspiracy, a combination or agreement between several persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large; though this is subject to exceptions in the case where the offence is a felonious one and actually accomplished, the offence of conspiracy, which is a misdemeanour only, being then merged in the felony. It is punishable by imprisonment and hard labour.

The law has given a very adequate remedy

in damages for preferring malicious indictments or prosecutions against a person, either by an action of conspiracy, which cannot be brought but against two at the least, and is confined to the particular case where the plaintiff has been acquitted by verdict, upon an accusation of treason or felony, or, which is the only way now known in practice, by an action on the case for a false and malicious prosecution, which may be brought either against a single person or against several, with an allegation that they conspired together for the purpose.

A conspiracy to raise the price of wages was unlawful by 6 Geo. IV. c. 129, amended by 22 Vict. c. 34, but both these acts were repealed by s. 7 of 34 & 35 Vict. c. 32, which act was itself repealed by the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86. The third section of this act provides that 'an agreement or combination by two or more persons to do any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.'

Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. 86. By this act provision is made for amending the law as to conspiracy, so far as relates to trade disputes, and making it no longer criminal to conspire to do an act, not criminal if done by one only, where such conspiracy has not any punishment awarded to it by Act of Parliament, with certain exceptions in the case of workmen employed in the supply of gas and water; and further providing for procedure under the Criminal Law Amendment Act, 1871, by indictment and not summarily; and also for penalties for certain acts of intimidation or violence. See *Chitty's Statutes*, vol. iv., tit. '*Master and Servant.*'

Conspiracy to Murder. Misdemeanour, by 24 & 25 Vict. c. 100, s. 4, punishable by penal servitude not exceeding ten years, or by imprisonment.

Conspiratione, the writ that lay against conspirators.—*Reg. Orig.* 134; *F. N. B.* 114.

Conspirators, those who bind themselves by oath, covenant, or other alliance, that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc.—33 *Edw. I.* st. 2. Besides these, there are conspirators in treasonable purposes: as for plotting against the government.

Constable [fr. *comes stabuli*, Lat., in the Eastern Empire a superintendent of the imperial stables, or the emperor's master of the horse, who at length obtained the command of the army], an officer to whom our law commits the duty of maintaining the peace, and bringing to justice those by whom it is infringed.

Constables are of two sorts, high and petty. The former, called also chief constables, were first ordained by the Statute of Winchester, 13 Edw. I. st. 2, c. 6; they were formerly appointed at the courts-leet of the franchise or hundred over which they preside, or in default of that, then by the justices at their special sessions, as directed by 7 & 8 Vict. c. 33, s. 8. The petty constables were inferior officers in every town and parish, subordinate to the high constable of the hundred, and first instituted about the reign of Edward III. The proper duty of the high constable seems to be to keep the Queen's peace within the hundred, as the petty constable does within the parish or township. He is also, by various statutes, charged with other duties; such as that of serving precepts and warrants on certain occasions, and the returning of lists of jurors.

By 32 & 33 Vict. c. 47, provision is made for the abolition of the office of high constable throughout England and Wales, and for the discharge, by the clerk to the justices of the peace in each petty sessional division, of the duties theretofore performed by high constables in connection with notices of the holding of special sessions and other matters.

An action cannot be brought against a constable for what he does as constable, after the expiration of six months from the commission of the act, and without making a written demand of a perusal and copy of his warrant six days at least before the action is commenced.—24 *Geo. II.* c. 24, s. 6.

Petty constables, head-boroughs, tithingmen, and bors-holders, were formerly all chosen by the jury at the court-leet; or if no court-leet were held, then by two justices of the peace. But by 5 & 6 Vict. c. 109, no petty constable, head-borough, bors-holder, tithing-man, or peace officer of the like description, is to be appointed for any parish, etc., at any court-leet or tourn, except for the performance of duties unconnected with the preservation of the peace; and by 35 & 36 Vict. c. 92 parish constables are to be appointed only in cases where the county quarter sessions deem an appointment necessary.

By the Municipal Corporations Act, 1882, s. 191, in all boroughs to which that Act applies, 'borough constables' are appointed by the watch committee, but the Local Government Act, 1888, has, in the case of boroughs having a population of less than 10,000, transferred the appointments to the County Councils.

In counties constables were appointed by the

justices of the peace under 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; and 19 & 20 Vict. c. 69; 'The County and Borough Police Act, 1856,' by which provision was made for the consolidation of the county and borough police; but the Local Government Act, 1888, has transferred the appointments to joint committees of the justices and the county councils.

The Police Act 1890, 53 & 54 Vict. c. 45, makes provision for pensions, allowances and gratuities to Police Constables in England and Wales and their widows and children. It provides a scale of superannuation and makes a pension a matter of right instead of a matter of favour.

Special constables are appointed on particular occasions, 41 Geo. III. c. 78; 1 & 2 Wm. IV. c. 41, and 5 & 6 Wm. IV. c. 43, under which Acts very numerous appointments were made in London in November 1887, on the occasion of public meetings being held in Trafalgar Square. As to private persons acting as constables without special authority, see PEACE, BREACH OF THE; 13 & 14 Vict. c. 20; and 19 & 20 Vict. c. 69. For Lord Constable, see HIGH CONSTABLE. See *Chitty's Statutes*, vol. iv. tit. '*Police*.'

Constablewick, the jurisdiction of a constable.

Constat, a certificate which the clerk of the pipe and auditors of the Exchequer made, at the request of any person who intended to plead or move in that Court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record, touching the matter in question. It was held to be superior to an ordinary certificate, because it did not contain anything but what appeared on record. An exemplification of the enrolment of letters patent under the Great Seal is called a *constat*.—*Co. Litt.* 225; *Page's case*, 5 *Rep.* 52.

Constat (*v.n.*), it appears. See NON-CONSTAT.

Constituent, (1) one who appoints an agent; particularly (2) one who, by his vote, constitutes or elects a member of Parliament.

Constituimus (*we constitute or appoint*).

Constitution, any regular form or system of government. Also a particular law, ordinance, or regulation made by the authority of any superior; as the Novel Constitutions of Justinian and his successors; the Constitutions of Clarendon; the Ecclesiastical Constitutions, etc.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt. D. 1. 4, 4. —(Later laws prevail over those which preceded them.)

Constitutor, a person who has promised to pay the debt of another.

Constraint, duress.

Constructio legis non facit injuriam. Co. Litt. 183.—(The construction of law does not work an injury.)

Construction, interpretation.

Construction, Court of. A Court of Equity or of Common Law, as the case may be, is called the Court of Construction with regard to wills, as opposed to the Court of Probate, whose duty is to decide whether an instrument be a will at all. Now the Court of Probate may decide that a given instrument is a will, and yet the Court of Construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, etc. See PROBATE.

Construction of statutes. See ACT OF PARLIAMENT.

Construction of wills. See WILLS.

Constructive notice. The knowledge which the law implies a party to have had, whether he actually had it or not;—thus, the law implies that an under lessee has knowledge of the contents of the head lease, whereas he very frequently has not. The Conveyancing Act, 1882, 45 & 46 Vict. c. 39, s. 3, restricts constructive notice as follows:—'A purchaser [including in that term any person taking or dealing for property of any kind whether as lessee or mortgagee] shall not be prejudicially affected by notice of any instrument, fact, or thing, unless it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; *or in the same transaction with respect to which a question of notice to the purchaser arises*, it has come to the knowledge of his counsel as such, or of his solicitor, or other agent as such, or would have come to the knowledge of his solicitor or other agents as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent;' but this section does not exempt a purchaser from liability under any covenant, etc., contained 'in any instrument under which his title is derived.'

Constructive total loss, a term used in the law of marine insurance, to denote a loss which entitles the assured to claim the whole amount of his insurance, on giving to the assurers notice of abandonment. Generally there is a constructive total loss when the subject-matter insured has not actually perished or lost its form or species, but has, by one of the perils insured against, been reduced to such a state or placed in such a position as to make its total destruction

though not inevitable, yet highly imminent, or its ultimate arrival under the terms of the policy, though not utterly hopeless, yet exceedingly doubtful. In such a case the assured, by giving notice within a reasonable time to the assurers of *abandonment*, i.e., the relinquishment of all his right to whatever may be saved, is entitled to recover against them as for a total loss. See *Arnould on Marine Insurance*, 6th ed., 951, 1024.

Constructive treason, an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law, and therefore highly dangerous to public freedom. —*Erskine's Defence of Lord George Gordon*; 3 *Hall. Const. Hist.* c. xv. p. 151. See TREASON.

Constructive trust, which arises from equitable operation; thus when an estate is subject to a trust or equitable interest or lien, and a person purchases it for value, with either actual or constructive notice of it, the estate will still be subject to the trust or equitable interest in the hands of such a purchaser. To this general rule, however, there is an exception in the case of a disseisor, abator, or intruder, who cannot hold in trust, although he have notice of it, for he is not *in* in privity of the estate, to which it is annexed, but in the *post*, which is inconsistent with the trust. And notice of an unenrolled bargain or sale, or of an unregistered deed, will bind a purchaser; but notice of a fraud will not convert the person receiving it into a trustee. So a person acquiring an estate as a voluntary grantee, even without notice, or as a devisee, will take it subject to every equitable interest, for equity will presume notice where no consideration has been paid.

Of course, if a person purchase of a trustee, or from a purchaser affected with notice, for a valuable consideration without notice, he will hold the estate discharged of the trust.

It is not clear how far a purchaser may be affected by notice of a constructive trust; notice of an equitable title, it is to be observed, is very different from notice of a legal title; the result of the authorities appears to be, that where the construction to be put on the words of the instrument on which the equitable title arises may admit of serious doubt, the purchaser will not be bound, though the Court may consider that the words give an equitable title; on a similar principle the Court will not, at least in a doubtful case, rectify a settlement as against a purchaser, though the case might be clear as against a volunteer.—2 *Sp. Eq. Jur.*

The doctrine of constructive trusts also arises upon the renewal of a lease by a trustee, or executor, or executor *de son tort*, or person having a limited interest in his own name, even in the absence of a fraud, and upon the refusal of the lessor to grant a new lease to the *cestui que trust*, or expectant; for such renewed lease is held upon trust for the person beneficially entitled to the old lease or the expectant, in order to prevent persons in fiduciary situations from acting so as to take a benefit for themselves. This doctrine is extended to the renewal of leases by one of several persons, or partners, jointly interested—by an agent, mortgagor, mortgagee, or person jointly interested with an infant—but, if the renewed lease turn out not to be beneficial, the person renewing must sustain the loss; if beneficial, the infant can claim his share of the benefit to be derived from it.

A renewing trustee, and a volunteer claiming under him, as well as a purchaser from him with notice, will be directed to assign the lease free from incumbrances, except a *bonâ fide* lease made by him at the best rent, and to account for the mesne rents and profits; but he will be entitled to be indemnified against his covenants with the lessor, and will have a lien upon the estate for the costs of renewal, and the expenses of lasting improvements with interest. See the leading authority on this subject, *Keech* v. *Sandford*, otherwise called the *Romford Market Case* (1726), 1 *White & Tudor*, *L. C.*, 6th. ed. 53.

Constructive use. See USE.

Consuetudinarius, a ritual or book, containing the rights and forms of divine offices, or the customs of abbeys and monasteries.

Consuetudinibus et serviciis, a writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him.—*Reg. Orig.* 159; *F. N. B.* 151; and *New. Nat. Brev.* 330.

Consuetudo, contra rationem introducta, potiùs usurpatio quam consuetudo appellari debet. Co. Litt. 113.—(A custom introduced against reason ought to be called rather an usurpation than a custom.)

Consuetudo debet esse certa; nam incerta pro nullâ habetur. Dav. 33.—(A custom should be certain; for an uncertain custom is considered null.)

Consuetudo est altera lex. 4 Co. 21.—(Custom is another law.)

Consuetudo est optimus interpres legum. 2 Inst. 18.—(Custom is the best expounder of the laws.)

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Jenk. Cent. 273.—(Custom and common

usage overcome the unwritten law, if it be special; and interpret the written law, if the law be general.)

Consuetudo ex certâ causâ rationabili usitata privat communem legem. Litt. s. 169. —(A custom grounded on a certain reasonable cause supersedes the common law.)

Consuetudo licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati. 4 Co. 18.—(A custom, though it be of great authority, should never, however, be prejudicial to manifest truth.)

Consuetudo loci observanda est. Litt. s. 169.—(The custom of a place is to be observed.)

Consuetudo manerii et loci observanda est. 6 Co. 67.—(A custom of a manor and place is to be observed.)

Consuetudo neque injuriâ oriri neque tolli potest. Lofft. 340.—(Custom can neither arise from, nor be taken away by, injury.)

Consuetudo præscripta et legitima vincit legem. Co. Litt. 113.—(A prescriptive and legitimate custom overcomes the law.)

Consuetudo non trahitur in consequentiam. 3 Keb. 499.—(Custom is not drawn into consequence.) See *Muggleton* v. *Barnett*, 4 *Jur. N. S. Ex.* 139.

Consuetudo regni Angliæ est lex Angliæ. Jenk. Cent. 119.—(The custom of the kingdom of England is the law of England.)

Consuetudo semel reprobata non potest ampliùs induci. Dav. 33.—(Custom once disallowed cannot be again produced.)

Consuetudo volentes ducit, lex nolentes trahit. Jenk. Cent. 274.—(Custom leads the willing, law compels the unwilling.)

Consul, an officer appointed by competent authority to reside in foreign countries, to facilitate and extend the commerce carried on between the subjects of the country which appoints him and those of the country or place in which he is to reside. The office appears to have originated in Italy, about the middle of the twelfth century, and was generally established all over Europe in the sixteenth century. British consuls were formerly appointed by the Crown, upon the recommendation of great trading companies, or of merchants engaged in trade with a particular country and place; but they are now directly appointed by Government, without requiring any such recommendation, though it, of course, is always attended to when made. The right of sending consuls to reside in foreign countries depends either upon a tacit or express convention.

The duties of a consul, even in the confined sense in which they are commonly understood, are important and multifarious. It is his business to be always on the spot, to watch over the commercial interests of the subjects of the state whose servant he is; to be ready to assist them with advice on all doubtful occasions; to see that the conditions in commercial treaties are properly observed; that those he is appointed to protect are subjected to no unnecessary or unjustifiable demands in conducting their business; to represent their grievances to the authorities at the place where they reside, or to the ambassador of the sovereign appointing him, at the court on which the consulship depends, or to the government at home; in a word, to exert himself to render the condition of the subjects of the country employing him, within his consulship, as comfortable, and their transactions as advantageous and secure as possible.

The consuls and vice-consuls are, by express enactment (46 Geo. III. c. 98, s. 9), empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside; and see the Consular Salaries and Fees Act 1891, 54 & 55 Vict. c. 36, repealing the greater part of 6 Geo. IV., c. 87. It is also laid down that a consul is to attend, if requested, all arbitrations where property is concerned, between masters of British ships and the freighters, being inhabitants of the place where he resides.—*Chitty's Com. Law*, Vol. I.

Any person, whether he be a subject of the state by which he is appointed, or of another, may fill the office of consul, provided he be approved and admitted by the government in whose territory he is to reside. In most instances, however, but not always, consuls are the subjects of the state appointing them.—*McCull. Com. Dict.*

Consular Marriage Acts of 1849 and 1868, 12 & 13 Vict. c. 68, and 31 & 32 Vict. c. 61, for the marriage of British subjects abroad by consuls, extended by the Marriage Act 1890, 53 & 54 Vict. c. 47, and Regulations made by Order in Council thereunder.

Consulta ecclesia, a church full or provided for.—*Cowel.*

Consultary response, the opinion of a court of law on a special case.

Consultation, a writ in the nature of a *procedendo*, whereby a cause, having been removed by prohibition from the ecclesiastical court to the king's court, is returned thither again; for if the judges of the king's court, upon comparing the libel with the suggestion of the party, find the suggestion false or not proved, and therefore the cause to be wrongfully removed from the ecclesiastical court, then upon this consultation or deliberation they decree it to be returned, whereupon the

writ in this case obtained is called a consultation.—24 *Edw. I.; Reg. Orig.* 44.

Also a meeting of two or more counsel and the solicitor instructing them for deliberating or advising.

Consummation, the completion of a thing; (2) the completion of a marriage between two affianced persons by cohabitation.

Consummation of tenancy by the curtesy, is when a husband, upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail, of which she was seised during the marriage, for his own life, provided he has had issue by her, capable of inheriting. His estate becomes *initiate* upon birth of a child.

Contagious Diseases (Animals). The acts upon this subject have been twice consolidated; first by 32 & 33 Vict. c. 70; and secondly, by the Contagious Diseases (Animals) Act, 1878, 41 & 42 Vict. c. 74, which contains provisions for preventing the spreading of 'cattle plague, pleuro-pneumonia, foot and mouth disease, and sheep pox or sheep scab,' by slaughtering, or restricting the movement of animals, i.e., 'cattle, sheep, goats, and all other ruminating animals, and swine,' affected with these diseases. The act of 1878 has been four times amended; in 1884 by 47 Vict. c. 13, as to the prohibition of the landing of foreign animals, and by 47 & 48 Vict. c. 47 as to the transfer of districts by local authorities; in 1886 by 49 & 50 Vict. c. 32, of which the 8th and principal section enabled the Privy Council to extend the acts to all four-footed beasts; and in 1890 by 53 & 54 Vict. c. 14, as to the slaughter of cattle affected with pleuro-pneumonia.

Contagious Diseases Prevention Acts, 29 Vict. c. 35, and 32 & 33 Vict. c. 96. These acts had for their object the prevention of 'venereal diseases, including gonorrhœa,' by the medical examination and detention of prostitutes. They were in force at certain naval and military stations only, and were repealed in 1886 by 49 Vict. c. 10. See *Amos on the Laws for the Regulation of Vice.*

Contango. Contracts for shares on the Stock Exchange, London, are made for ready money, or for payment on 'settling' days; if for ready money, the money is paid immediately; if for time, it is paid on the settling day. The price at which stock or shares are sold, to be transferred on the next settling day, is called the 'price for account.' In the London share market, the 'account day' is generally twice a month. The 'settling day' is always the day before the account day. On the settling day takes place the business of giving the names of the persons for whom brokers have bought, and that of carrying over transactions to another day, which are called 'continuances,' the commission for which is called 'contango.' Foreign railway shares are subject to the same rules as English shares. And in foreign stocks, the account and settling days are one and the same. See *Wilkinson's Law of Public Funds*, 155 *et seq.*, and *Keyser on the Stock Exchange.*

Contemner, one who has committed contempt of court.

Contemporanea expositio est optima et fortissima in lege. 2 Inst. 11.—(A contemporaneous exposition is the best and most powerful in law.)

Contempt of Court. A disobedience to the rules, orders, process, or dignity of a court, which has power to punish for such offence by attachment. Contempts are either *direct*, which only insult or resist the powers of the court, or the persons of the judges who preside there; or *consequential*, which, without such gross insolence or direct opposition, plainly tend to create a universal disregard of their authority. The principal instances of either sort are:—(1) those committed by inferior judges and magistrates by acting unjustly, oppressively, and irregularly in administering those portions of justice which are entrusted to their distribution, or by disobeying any writs issued out from the superior courts, by proceeding in a cause after it is put a stop to or removed by writ of prohibition, certiorari, error, supersedeas, and the like. (2) Those committed by sheriffs, bailiffs, gaolers, and other officers of the court, by abusing the process of the law or deceiving persons, or by any acts of oppression, extortion, collusive behaviour, or culpable neglect of duty. (3) Those committed by attorneys or solicitors, who are officers of their respective courts, by gross instances of fraud or corruption, injustice to their clients, or other dishonest practices. (4) Those committed by jurymen in collateral matters, relating to the discharge of their office, such as making default when summoned, refusing to be sworn, or to give any verdict, eating or drinking without the leave of the Court, and especially at the cost of either litigant. (5) Those committed by witnesses, by making default when summoned, refusing to be sworn or examined, or prevaricating in their evidence. (6) Those committed by parties to any suit or proceeding in a court; as by disobedience to any rule or order made in the progress of a cause, by non-payment of costs, or by non-observance of awards made rules of court. (7) Those committed by any other persons.—4 *Bl. Com.* 233.—Contempts may be also divided into acts of contempt committed in the court itself and out of court. Among the former

are all unseemly behaviour (for which there is an express power to punish by County Court Act, 1888), as talking boisterously, applauding any part of the proceedings, refusing to be sworn, or to answer a question as a witness, interfering with the business of the Court on the part of a person who has no right to do so, and refusing to acquiesce in the ruling of the Court, or speaking disrespectfully of or to the judge or jury or any other person, on the part of one who has a right to speak properly, i.e., either of the parties or his representative. Among the latter (not mentioned above) is the attempting by intimidation to cause any suitor to discontinue his action, as in *Mulock's case*; kidnapping or corrupting witnesses or attempting to do so, corrupting or attempting to corrupt jurors, obstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court.

Every judge of a court of record has power immediately to commit for a contempt committed in his presence, but the power of an *inferior* Court to commit for contempt does not extend to contempt out of court (*Reg.* v. *Lefroy*, *L. R.* 8 *Q. B.* 134). In the case of contempt out of court, the individual is called upon to show cause why he should not be committed, and is allowed to file affidavits in the matter. Contempt is sometimes punished by a fine; more commonly by commitment for an indefinite period. See PURGING CONTEMPT, and *R.* v. *Castro* (*Onslow & Whalley's Case*), *L. R.* 9 *Q. B.* 219. Less frequently by a sentence of imprisonment for a definite period, as in *Fernandez's case*, 7 *Jurist*, *N. S.* The Acts 11 Geo. IV. and 1 Wm. IV. c. 36, and 23 & 24 Vict. c. 149, make provision for the relief of prisoners in contempt of the Court of Chancery; and as to the Ecclesiastical Courts, see 2 & 3 Wm. IV. c. 93, 3 & 4 Vict. c. 93, and 6 & 7 Vict. c. 38. See CONTUMACE CAPIENDO.

Contempt of Parliament. Any violation of the privileges of either House of Parliament may be punished by the House by committal. See 14 *East* 158; 9 *A. & E.* 1; and 11 *A. & E.* 253.

Contempt of the Queen's Person or Government is punishable at common law by fine and imprisonment. See 4 *Steph. Com.*

Contenement, a man's countenance or credit, which he has together with, and by reason of, his freehold; or, that which is necessary for the support and maintenance of men, agreeably to their several qualities of life.

Contentious business, the business of legal practitioners when there is a contest, as opposed to *non-contentious business* when there is no such contest; the term is most frequently used in connection with obtaining probate or administration.

Contentious jurisdiction, jurisdiction to hear and determine any matter between party and party in an action or other judicial proceeding.

Contestatio litis, the plea and joinder of issue in the Ecclesiastical Courts.

Contestatio litis eget terminos contradictarios. Jenk. Cent. 117.—(The joinder of issue in a suit needs contradictory terms.)

Contestation, an issue of controversy.

Contingency with a double aspect, when *one event only* is expressed by the party, and two events are clearly in his contemplation. This is a construction in favour of the intention, that the intention may not be frustrated. The general rule is, that an interest to commence on a contingency shall not take place unless that contingency shall arise. It is in a few cases only that this favour is extended by construction. The exception seems to have been borrowed from the mode in which remainders are limited, and the construction which the limitations of remainders receive; and under which every estate will take place after the preceding estate, without regard to the particular time at which, by the words of the remainder, the estate is to take place. In these cases the Court proceeds on the intention that the determination of every prior or intermediate estate shall accelerate the commencement of the more remote estate. It is on similar grounds of intention that the contingency with double aspect is allowed; for it is allowed on the idea that, by the intent of the testator, the estate limited on a contingency referable to one estate, shall also take place in case the contingency should not arise on which the prior gift is to vest an interest, and then, in point of law, the contingency has a double aspect: provided, by expression, for a contingency annexed to the interest previously limited, and also, by inference and construction of law, for the event that the contingency on which the prior interest is to vest shall never arise.

Contingent legacy, one bequeathed on a contingency; *e.g*, if the legatee attain twenty-one.

Contingent remainder, an executory remainder limited so as to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate.

The judges held (*Smith* d. *Dormer* v. *Parkhurst*, 18 *Vin. Abr.* 413; 4 *Bro. Cas. Par.* 353) that, in every case where an estate is given to A. for life, the grantor has an interest remaining in him to enter upon the

estate, if it should determine by any act of the tenant amounting to a forfeiture; that this right is inherent in the grantor, from the nature of the estate itself, and may be conveyed to the trustees; and that, when it is conveyed to them, it becomes a legal estate in remainder, and vests in them as such. On this ground, the usual limitation to trustees for preserving contingent remainders is held to confer on them a vested estate.

The interposition of trustees to preserve contingent remainders has been rendered unnecessary in these cases by the 8 & 9 Vict. c. 106, s. 8, which enacts 'that a contingent remainder existing at any time after the 31st day of December, 1844, shall be, and, if created before the passing of this act, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened.—*Prest. Conv.* 403.

Contingent remainders are not preserved by this statute in all possible cases of the determination of the particular estate: they are only preserved against those destructive acts by or with the concurrence of the owner of the particular estate which prematurely determine it. A contingent remainder still fails of effect, if the particular estate regularly and naturally expire before the contingency happens, upon which the remainder vests; to obviate which, trustees, to preserve the contingent remainder, should, in such a case, be interposed.

In those cases where contingent remainders are interposed between a particular estate and other limitations over, if the contingent remainder be *not* in fee, but for life or in tail, the subsequent remainder may be vested, provided it be made to a person *in esse*. So a subsequent contingent remainder may become vested in interest before a preceding one, which will be no obstruction to its so vesting. But where there is a contingent limitation in fee absolute, no estate limited afterwards can be vested (*Fearne's Cont. Rem.* c. 1, s. 8). But a contingent determinable fee, devised in trust for some special purpose only, will not prevent a subsequent limitation to one *in esse* from being vested. Where estates are subjected to a general power of appointment in the first taker, with remainders over in default of such appointment, the power does not suspend the remainders from vesting.

As to contingent remainders created by any instrument executed *after* the passing of 40 & 41 Vict. c. 33 [2nd August, 1877], it is enacted by that act that 'every contingent remainder . . . shall in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation.

Contingent uses. These properly take effect as remainders and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law, which are, that a vested estate of freehold must precede, in order to support, the remainder, and that a remainder must vest either during the existence of such preceding estate or *eo instanti* that it determines. And herein these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest, after a particular estate for life created in the same. The following is an example of a contingent use: A use to the first unborn son of A., after a previous limitation to A. for life or for years, determinable on his life: for this does not answer to the notion of either a shifting or a springing use. To create a good springing use, it must be limited at once, independently of any preceding estate, and not by way of remainder, for if so, it is then a contingent and not a springing use, and subject to the laws governing contingent remainders. Thus springing uses are confined within very narrow limits, and future or contingent uses are placed on exactly the same footing with contingent remainders. Although shifting or secondary uses cannot be classed with future or contingent uses, because of the different modes by which they take effect, yet as a shifting use, when created, may, in point of limitation, be like a contingent remainder, it will, in that case (as well as a strict contingent use which does not take effect in derogation of any other estate), be subject to the same laws.

Continual claim, abolished by 3 & 4 Wm. IV. c. 27, s. 11.

Continuance, Notice of trial by, when notice of trial had been given, and the plaintiff was not ready to proceed, instead of countermanding his notice, he might continue it to any sitting by notice of trial by continuance (*R.* 36, *H. T.* 1853). It could be given only once in a term.—1 *Chit. Arch.*, 12th ed., 316.

It is now obsolete, notice of trial not being given now for any particular sittings. See NOTICE OF TRIAL.

Continuances. The entry of them is abolished by *Reg. Gen. H. T.* 1853, r. 31.

Continuando, a word which was formerly used in a special declaration of trespass when the plaintiff would recover damages for several trespasses in the same action; and, to avoid multiplicity of actions, a man might in one action of trespass, recover damages for many trespasses, laying the first to be done with a continuando to the whole time in which the rest of the trespasses were done; which was in this form, *continuando* (by continuing) the trespasses aforesaid, etc., from the day aforesaid, etc., until such a day, including the last trespass.—*Termes de la Ley.*

Contra bonos mores, against good morals.

Contra formam collationis, a writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of an hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands. —*Reg. Orig.* 238; *F. N. B.* 210.

Contra formam feoffamenti, a writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord, to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter.—*Reg. Orig.* 176; *Old. Nat. Br.* 162.

Contra formam statuti (*contrary to the form of the statute in such case made and provided*). The usual conclusion of every indictment, etc., brought for an offence created by statute. —7 *Geo. IV.* c. 64; s. 20; 14 & 15 *Vict.* c. 100, s. 24, by which it is provided that no indictment shall be held bad for the insertion of the words 'against the form of the *statute*' instead of the words 'against the form of the *statutes*.'

Contra negantem principia non est disputandum. Co. Litt. 43.—(There is no disputing against one who denies first principles.)

Contra non valentem agere nulla currit præscriptio.—(No prescription runs against a person unable to bring an action.)

Contra pacem (*against the peace*). It is usual, and was formerly necessary, in indictments, to allege that the offence was committed against the peace of our Lady the Queen; but the omission of these words does not render an indictment bad.—14 & 15 *Vict.* c. 100, s. 24.

Contra veritatem lex nunquam aliquid permittit. 2 Inst. 252.—(The law never suffers anything contrary to truth.)

Contraband [fr. *contra*, Lat., against; and *bando*, Ital., edict], such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties; also a term applied to designate that class of commodities which neutrals are not allowed to carry during war to a belligerent power.

It is a recognised general principle of the law of nations, that ships may sail to and trade with all kingdoms, countries, and states in peace with the princes or authorities whose flags they bear; and that they are not to be molested by the ships of any other power at war with the country with which they are trading, unless they engage in the conveyance of contraband goods. But great difficulty has arisen in deciding as to the goods comprised in this term.

In order to obviate all disputes as to what commodities should be deemed contraband, they have sometimes been specified in treaties or conventions. But this classification is not always respected during hostilities; and it is sufficiently evident that an article which might not be contraband at one time, or under certain circumstances, may become contraband at another time, or under different circumstances. It is admitted on all hands, even by Mr. Hubner, the great advocate for the freedom of neutral commerce, that everything that may be made directly available for hostile purposes is contraband—as arms, ammunition, horses, timber for ship-building, and all sorts of naval stores. The greatest difficulty has occurred in deciding as to provisions, which are sometimes held to be contraband, and sometimes not; so it is doubted whether coal be contraband of war. Lord Stowell has shown that the character of the port to which the provisions are destined is the principal circumstance to be attended to in deciding whether they are to be looked upon as contraband. A cargo of provisions intended for an enemy's port, in which it was known that a warlike armament was in preparation, would be liable to arrest and confiscation: while, if the same cargo were intended for a port where none but merchantmen were fitted out, the most that could be done would be to detain it, paying the neutral the same price for it as he would have got from the enemy.

The right of visitation and search is a right inherent in all belligerents; for it would be absurd to allege that they had a right to prevent the conveyance of contraband goods to an enemy, and to deny them the use of

the only means by which they can give effect to such right.—*Vattel*, b. 3, c. vii., s. 114. The object of the search is twofold: first, to ascertain whether the ship is neutral or an enemy, for the circumstance of his hoisting a neutral flag affords no security that it is really such; and secondly, to ascertain whether it has contraband articles or enemies' property on board.—*McCull. Com. Dict.*

Contracausator, a criminal; one prosecuted for a crime.

Contract, an agreement between competent parties, upon a legal consideration, to do or to abstain from doing, some act. The term is usually employed to designate only simple or parol obligations, which comprehend not only verbal and unwritten contracts, but all contracts not of record nor under seal.

Contracts are divided into three classes:—1st, contracts of record, such as judgments, recognizances, and statutes staple; 2nd, specialities, which are under seal, such as deeds and bonds; 3rd, simple contracts, or contracts by parol. There is no such fourth class as contracts in writing, distinct from verbal and sealed contracts; both verbal and written contracts are included in the class of simple contracts, and the only distinction between them is in regard to the mode of proof.

Every contract is founded upon the mutual agreement of the parties; when the agreement is formal, and stated either verbally or in writing, it is usually called an express contract; when the agreement is matter of inference and deduction, it is called an implied contract.

Contracts are also distinguished into execute dand executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made; as where an article is sold and delivered, and payment therefore is made on the spot; *executory*, where some future act is to be done; as where an agreement is made to build a house in six months; or to do an act on or before some future day; or to lend money upon a certain interest, payable at a future time.

There is also one other distinction, namely, that between entire and severable contracts. An *entire* contract is one the consideration of which is entire on both sides. The entire fulfilment of the promise by either is a condition precedent to the fulfilment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.—See the works on Contracts of *Addison*, *Chitty*, *Pothier*, *Story*. See also CONSIDERATION.

Contract Note, a short statement of the effect of a contract; in and for the purposes of the Stamp Act, 1891, this term means, by s. 52 of that act, 'the note sent by a broker or agent to his principal (except where such principal is acting as a broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security.'

Contract of benevolence, a contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

Contractus est quasi actus contra actum. 2 Co. 15.—(A contract is, as it were, act against act.)

Contractus ex turpi causâ vel contra bonos mores, nullus. Hob. 167.—(A contract arising out of a base consideration, or against morality, is null.)

Contradiction in terms, a phrase of which the parts are expressly inconsistent, as, e.g., 'an innocent murder.' 'A fee simple for life.'

Contrafaction, a counterfeiting.—*Blount.*

Contramandatio, placiti, a respiting or giving a defendant further time to answer, or a countermand of what was formerly ordered.—*Leg. Hen. I.* c. 59.

Contramandatum, a lawful excuse, which a defendant in a suit by attorney alleges for himself to show that the plaintiff has no cause of complaint.—*Blount.*

Contrapositio, a plea or answer.

Contrarients, used *temp.* Ed. II. to signify those who are opposed to the government, but are neither rebels nor traitors.

Contratinere, to withhold.

Contravention, an act done in violation of a legal condition or obligation; particularly any act by an heir of entail in opposition to the provisions of the deed of entail; also, the action founded on the breach of law-burrows. —*Bell's Scotch Dict.*

Contrectatio rei alienæ, animo furandi, est furtum. Jenk. Cent. 132.—(The touching or removing of another's property, with an intention of stealing, is theft.)

Contribution, the performance by each of two or more persons, jointly liable by contract or otherwise, of his share of the liability. It frequently arises between sureties, who are bound for the same principal, when upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all became bound; the surety,

who has paid the whole, being entitled to receive contribution from all the others for what he has done, in relieving them from a common burthen. Contribution amongst sureties may in general be enforced as well at law as in equity; but in some cases the remedy is more extensive in equity than at law. Thus, suppose there are three sureties in a bond for 3,000*l.*, and one of them has been obliged to pay the whole debt, he could *at law* only sue one of the sureties for his third, viz., 1,000*l.*, although the other surety had become bankrupt; but in *equity* he might compel the solvent surety to contribute 1,500*l.*, the moiety of the entire sum.—*Story's Eq. Jur.*, s. 496.

By 19 & 20 Vict. c. 97, s. 5. a co-surety or co-debtor is entitled on payment of the debt to a transfer of the securities held by the creditor.

Legatees are sometimes compelled to refund and contribute for the payment of debts. In like manner, contribution lies between partners for any excess, which has been paid by one partner beyond his share, if upon the winding-up of the partnership affairs, such a balance appears in his favour; or if, upon a dissolution, he has been compelled to pay any sum for which he ought to be indemnified. It also lies between joint-tenants, tenants-in-common, and part owners of ships and other chattels, for all charges and expenditures incurred for the common benefit.—1 *Story's Equity*, 393—415. So there is contribution between co-defendants in contract, if the goods of one be taken by *fi. fa.* for the whole amount of judgment. There is no contribution among wrong-doers.—8 *T. R.* 186.

In an action in the Supreme Court, where a defendant claims to be entitled to contribution over against any other person, such other person may be made a 'Third Party.' See THIRD PARTY.

Contributione facienda, a writ that lay where tenants in common are bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution.—*Reg. Orig.* 175; *F. N. B.* 162.

Contributory, a person liable to contribute to the assets of a joint-stock company in the event of the same being wound up. Two lists of contributors are prepared by the official liquidators, viz., one (the 'A list') of those who are shareholders at the time of the winding-up order, and who are primarily liable to contribute, and another (the 'B list') of those who have ceased to be shareholders, but have been shareholders within the twelve months previously, and who are liable in a secondary degree. See Companies Act, 1862, ss. 38—78.

Controller [fr. *contrôle*, Fr., the copy of a roll of accounts], an overseer or officer appointed to examine and verify the accounts of other officers.

Contubernium, the union of slaves with their master's consent; the children of such unions were the property of their parents' owners.—*Sand. Just.*, 7th ed., 36.

Contumace capiendo. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III. c. 127, s. 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge has power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery, whereupon a writ *de contumace capiendo* issues from the High Court of Justice (Chancery Division).—2 & 3 *Wm. IV.* c. 93; 3 & 4 *Vict.* c. 93. See *Ex parte Bell Cox.*, 20 *Q. B. D.* 1; CONTEMPT.

Contumacy (contumacia), a refusal to appear in court when legally summoned; or disobedience to the rules and orders of a court.

Conusance of pleas, a privilege that a city or town has to hold pleas. See COGNIZANCE.

Conusant [fr. *connaissant*, Fr.], knowing or understanding.

Conusee. See COGNIZEE.

Convent, the fraternity of an abbey or priory, as *societas* is the number of fellows in a college.

Conventicle, a private assembly or meeting for the exercise of religion; forbidden by Canons 12, 13, and 73. See DISSENTERS.

Conventicle Act, 22 Car. II. c. 1, by which all meetings of five or more persons, exclusive of the family, for nonconforming worship, were prohibited, repealed by 52 Geo. III. c. 155.

Conventio, an agreement or covenant.

Conventio in unum, the agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the pollicitation or proposal emanating from the one, and followed by the agreement of the other.—*Civil Law.* If the second party does not assent to the proposal in the sense in which it is made, he is not bound by his assent unless his mistake is unreasonable.

Conventio privatorum non potest publico juri derogare. Wing. 746.—(An agreement of private persons cannot affect public right.)

Conventio vincit legem. Dig. 2.—(An agreement overcomes law.)—6 *Taunt.* 430.

Convention, an extraordinary assembly of the Houses of Lords and Commons, without

the assent or summons of the Sovereign. It can only be justified *ex necessitate rei*, as the Parliament which restored Charles II. and that which disposed of the crown and kingdom to William and Mary.

Conventional estates, those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and rise from the operation of law.

Conventione, a writ for the breach of any covenant in writing, whether real or personal. —*Reg. Orig.* 115; *F. N. B.* 145.

Conventions with foreign countries as to the apprehension and extradition of fugitive offenders. See EXTRADITION.

Conventual church, that which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

Conventuals, religious men united in a convent or religious house.—*Cowel.*

Converse (*in logic*), the transposition of the subject and predicate in a proposition, as 'Everything is good in its place.' *Converse*, 'Nothing is good which is not in its place.'

Conversion, the wrongful appropriation of the goods of another. Where a person finding the goods of another, or having them in his possession, applies or converts them to his own use, without the owner's consent, the owner may maintain an action (formerly technically called an action of trover or conversion) against him. Refusal to restore the goods is *primâ facie* sufficient evidence of a conversion, though it does not amount to a conversion.—10 *Rep.* 56. See TROVER.

Conversion of property. From trusts there is derived an equitable principle relative to the constructive conversion of property, which is this:—That money directed to be employed in the purchase of realty, and realty directed to be sold and turned into money, are considered in equity as that species of property into which they are directed to be converted; and this, in whatever manner the direction is given; whether by will, or contract, marriage articles, settlement, or otherwise; and whether the money is actually deposited, or only covenanted to be paid, or whether the land is actually conveyed, or only agreed to be conveyed (*Fletcher* v. *Ashburner*, 1 *Bro. C.C.* 497). This principle is governed by the doctrine of equity, that that which ought to be done shall be deemed as actually done.

The property thus equitably transmuted by anticipation will possess all the qualities, incidents, and peculiarities of that kind of property into which it is destined to be changed. See 3 & 4 Wm. IV. c. 74, s. 71.

But the beneficiary may elect to take the property in the shape it then is, before the actual conversion takes place. Slight evidence of an intention so to elect will be sufficient. When a person entitled to the fee simple of an estate to be purchased with trust money, without requiring the purchase to be completed, causes the securities for the money to be changed in the name of a trustee, in trust for himself, *his executors, and administrators* (*Lingen* v. *Sowray*, 1 *P. Wms.* 172); and where a person entitled absolutely to the money to arise by the sale of real estate, makes a lease of the estate itself, reserving rent payable to him, his *heirs, and assigns* (*Crabtree* v. *Bramble*, 3 *Atk.* 380), these circumstances have been considered to amount to an election.

The nature of the fund cannot be altered by the election of a trustee or an infant.

Conversion of Stock, the change of it from one denomination to another, generally from a higher to a lower, as was done in the case of a small part of the National Debt, under The National Debt (Conversion of Stock) Act, 1884, 47 & 48 Vict. c. 23, and in the case of a very large and by far the greater part of it by the National Debt (Conversion of Stock) Act, 1888.

The scheme of the act of 1888 was as follows. The holders of New Three per Cents (who were liable to be paid off without notice) became liable to be and were paid off at par unless they *dissented* in writing, within a very short time, from receiving '2¾ per Cent. Consols' in exchange. The holders of Three per Cent. Consols and Three per Cent. Reduced (who could not be paid off without one year's notice, afterwards given) were also offered the same 2¾ per Cent. Consols in exchange upon signifying their *assent* in writing to the exchange within a very short time, but longer than that allowed for the dissent in the case of New Threes, special inducements to assent being held out by a five shilling per cent. bonus to the holders, and an eighteenpence per cent. allowance to their bankers, brokers, or other recognized agents.

The 2¾ per Cent. Consols (termed on the Stock Exchange 'Goschens,' from the name of the Chancellor of Exchequer who brought in the act) bear 2¾ interest until 1903, and 2½ per cent. interest from 1903 to 1923, when they become redeemable. See *Chit. Stat.* for 1888, tit. '*Stock*.'

Conveyance, an instrument which transfers property from one person to another, defined for the purposes of the Conveyancing Act, *infra*, as including 'assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed on a sale, mortgage, demise, or settlement of

any property, or on any other dealing with or for any property.' See CONVEYANCING ACT; DEED; USES; TRUSTS; etc., etc.

Conveyancers, persons who, being neither barristers, nor solicitors, nor proctors, employ themselves solely in the preparation of deeds or assurances of property. They must, by the Stamp Act, 1891, s. 44, and sched. 1, take out yearly a certificate upon which a stamp duty of 4*l.* 10*s.* for the first three years, and 9*l.* afterwards, is payable if they carry on business in London, Edinburgh, or Dublin, and 3*l.* for the first three years, and 6*l.* afterwards, if they carry on business elsewhere.

Conveyancing, the art of the alienation of property, by means of appropriate instruments or 'conveyances.' See next title.

Conveyancing Act, 1881, 44 & 45 Vict. c. 41. An act, of which the principal object is to shorten contracts of sale, conveyances, mortgages, and trust deeds, by a series of enactments that certain 'general words,' covenants, and conditions, which by the practice of conveyancers have for a long time been inserted at length as 'common forms' in these instruments, shall be *implied* therein by virtue of the act, unless the parties stipulate to the contrary. The act also provides forms of statutory mortgage, and of transfer and re-conveyance, and short forms of mortgage, further charge, conveyance on sale, and marriage settlement, in connection with which 8 & 9 Vict. c. 119, also providing a short form of conveyance, is repealed, although 8 & 9 Vict. c. 124, providing a short form of lease, is left standing. The Solicitors' Remuneration Act of the same year (see SOLICITORS) brings into force a new mode of remunerating solicitors for conveyancing business. Both acts were originally introduced by Lord Cairns.

The act also contains important provisions as to relief against forfeiture of leases, the powers and duties of mortgagors, mortgagees, trustees, and executors, the management of the property of married women and infants, and the recovery and redemption of rent-charges; and it allows the residue of 'long terms'—i.e., a residue of not less than 200 years of a term originally created for not less than 300 years—to be converted into a fee simple. See FORFEITURE, etc., etc.

The act came into operation on the 1st January, 1882, but the provisions as to relief against forfeiture of leases were retrospective.

Conveyancing Act, 1882, 45 & 46 Vict. c. 39. The principal provisions of this act are: section 2, providing that official certificates of the result of searches for judgments, etc., are to be conclusive in favour of a purchaser; section 3, restricting 'constructive notice'; and sections 8 & 9 relating to irrevocable power of attorney. See CONSTRUCTIVE NOTICE; POWER OF ATTORNEY; SEARCH.

Conveyancing counsel. The Lord Chancellor may nominate any number of conveyancing counsel in actual practice, not less than six, who have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court or any judge thereof may act under the 40th sect. of 15 & 16 Vict. c. 80—*Smi. Ch. Pr.* 506. No special provision is made for these counsel by the Jud. Acts, 1873, 1875; except in so far as they can retain their offices as officers of a Court whose jurisdiction is transferred to the Supreme Court. (Jud. Act, 1873, ss. 77 *et seq.*)

Convicia si irascaris tua divulgas, spreta exolescunt. 3 Inst. 198.—(If you be moved to anger by insults you publish them; if despised, they are forgotten.)

Convicium, anything which publicly insults another.—*Civil Law.*

Convict, a person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision. The act for abolishing forfeitures for treason and felony (33 & 34 Vict. c. 23), enables the Crown to appoint administrators of the property of convicts.

Conviction, the act of a legal tribunal adjudging a person guilty of a criminal offence. As to the powers of justices to convict summarily, see the Summary Jurisdiction Acts of 1848 and 1879, and the Summary Jurisdiction Rules of 1886. *Paley on Summary Convictions.*

Convivium, the same among the laity as *procuratio* with the clergy, viz., when a tenant, by reason of his tenure, is bound to provide meat and drink for his lord once or oftener in the year.—*Blount.*

Convocation, an assembly of the clergy. Its purpose is stated to be the enactment of canon law, subject to the license and authority of the sovereign, and the examination and censure of all heretical and schismatical books and persons. It is held during the session of parliament, and is convened by the sovereign. There are two convocations, one for the province of Canterbury, the other for that of York. It consists of an upper and a lower house in the province of Canterbury; in the upper sit the bishops, and in the lower the inferior clergy, who are represented by their proctors, and all the deans and archdeacons. In York, the convocation consists of one house only. Convocation, by express license from the sovereign, may legislate by making canons; but, except in one instance, in the year 1861, it has long ceased to

exercise any legislative power. *Steph. Com.*, book 4, c. vi.

Convoy, ships of war which accompany merchantmen in time of war, to protect them from the attacks of the enemy. There are five things essential to sailing with convoy: —viz. (1) It must be with a regular convoy under an officer appointed by government; (2) it must be from the place of rendezvous appointed by government; (3) it must be a convoy for the voyage; (4) the master of the ship must have sailing instructions from the commanding officer of the convoy; (5) the ship must depart and continue with the convoy till the end of the voyage, unless separated by necessity. *Abbott on Shipping*, pt. 3, c. iii.; *Marshall on Insurance*, book 1, c. ix., s. 5. Also a body of troops, which accompanies provisions, ammunition, or other property for protection.

Coolies, Cooly, porter, labourer.— *Indian.*

Coopertio, the head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood.—*Cowel.*

Coopertura, a thicket or covert of wood.

Co-ordinate and **Subordinate** are terms often applied as a test to ascertain the doubtful meaning of clauses in an Act of Parliament. If there be two, one of which is grammatically governed by the other, it is said to be *subordinate* to it; but if both are equally governed by some third clause, the two are called co-ordinate.

Coparceners, or **Parceners**, a tendency which arises when an inheritable estate descends from the ancestor to several persons possessing an equal title to it. It arises by act of law only, i.e., by descent, which, in relation to this subject, is of two kinds:— (1) Descent by the common law, which takes place where an ancestor dies intestate, leaving two or more females as his co-heiresses; these, according to the canon of real property inheritance, all take together as coparceners or parceners, the law of primogeniture not obtaining among women in equal relationship to their ancestor: they are, however, deemed to be one heir; and (2) Descent by particular custom, as in the case of gavelkind lands, which descend to all the males in equal degree, as the sons, brothers, or uncles of the deceased intestate ancestor; in default of sons, they descend to all the daughters equally.

Coparcenary relates to the estate—joint tenancy to the person. Hence a man may be coparcener with himself. Suppose two moieties of an estate to descend upon the same individual, one from his father and the other from his mother, he may fairly be said to possess the estate in coparcenary; for on his death without lineal descendants, one moiety will descend to his heir on the part of his father, and the other to his heir on the part of his mother.

Coparceners have a unity though not an entirety, or necessarily an equality of interest; if there be two only, each is properly entitled to the whole of a distinct moiety; and being seised in moiety there is no *jus accrescendi* between them, for on the death of one of them intestate, her moiety descends to her heir-at-law, who holds, subject to courtesy (if any), with the surviving parcener in coparcenary, although such heir may be a male, and a collateral. Indeed, their estates are held in coparcenary, so long as they claim by descent. As soon as any part is severed, by conveyance, from the title of the remaining part, the part so severed will be held in common.

Between the alienee and the other coparceners there will be a tenancy in common. The remaining coparceners will, as between themselves, continue to hold in coparcenary.

They are seised both jointly and severally, and possess a unity of title, but the estate may vest in them at different periods.

Coparcenary is like joint-tenancy so far as the same unity of title, and similarity of interest is common to both, but they differ in this, that while coparceners always must claim by descent (for if two sisters purchase an estate to hold to them and their heirs they are not parceners, but joint-tenants), joint-tenants always claim by act of parties.

Coparcenary is intermediate in its nature between joint-tenancy and tenancy in common. There is a unity of title, but no benefit of survivorship; for the share of a coparcener dying seised descends to her heir, who holds it also as a coparcener. A joint-tenant cannot convey his share to his companion by feoffment, because each is supposed to be equally seised of the whole: but he may convey it by release. Tenants in common, on the contrary, may convey to one another by feoffment, but not by mere release. But coparceners may adopt either mode.

This estate may be dissolved in any of the following modes:—

(1) By deed of partition, as

(α) Where coparceners agree to divide the estate into equal parts in severalty, each have a determinate portion.

(β) Where they appoint some third person to divide the estate, and after a division by him, each coparcener, according to seniority of age, or as shall be agreed between them, selects her own portion. The privilege of

seniority is in this case personal; for if the eldest sister be dead, her issue shall not choose first, but the next sister. But if an advowson descend in coparcenary, and the sisters cannot agree in the presentation, the eldest and her issue, nay, her husband, or her assigns, shall present alone, before the younger. And the reason given is, that the former privilege of priority in choice upon a division arises from an act of her own, the agreement to make partition, and therefore is merely personal; the latter, of presenting to the living, arises from the act of the law, and is annexed not only to her person, but to her estate also.

(γ) Where the eldest coparcener divides the estates, in which case she takes the portion remaining after her sisters have made their choice.

(δ) When they agree to cast lots for their shares.

(2) By the alienation of one of the parties which destroys the unity of title.

(3) By all the estate at last descending to one person, which reduces it to a severalty, and

(4) By a compulsory partition under a decree in Chancery.—*Co. Litt.* 163 *et seq.*

Copartnership. See PARTNERSHIP.

Cope, a custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.

Copeman, or **Copesman,** a chapman.

Copesmate [fr. *koopman*, Du., fr. *koop*, chaffer, exchange], a merchant, a partner in merchandize.

Copia libelli deliberanda, a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.—*Reg. Orig.* 51.

Coppa, a crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

Copulatio verborum indicat acceptationem in eodem sensu. Bac. Vol. IV. p. 26.—(The coupling of words shows their acceptance in the same sense.) See NOSCITUR A SOCIIS.

Coppice, or Copse [fr. *couper*, Fr., to cut], a small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

Copula, the corporal consummation of marriage. See PER VERBA DE PRÆSENTI.—*Copula* (in logic), the link between subject and predicate contained in the verb.

Copy [*copia*, Lat], the transcript or double of an original writing; as the copy of a patent, charter, deed, etc. As to when copies certified or examined are admissible in evidence, see *Taylor on Evidence*, s. 1323 *et seq.*

Copyhold a base tenure founded upon immemorial custom and usage; its origin is undiscoverable, but it is said to be the ancient villeinage modified and changed by the commutation of base services into specified rents, either in money or money's worth.

A copyhold estate is a parcel of the demesnes of a manor held at the lord's will, and according to the custom of such manor. The tenant may have the same *quantities of interest* in this tenure, as he may enjoy in freeholds, as an estate in fee-simple or (by particular custom) fee-tail, or for life, and he may have only a chattel-interest, of an estate for years, in it. By the custom of some manors, the estate devolves upon the heir on the ancestor's death, and is called a copyhold of inheritance. As far as the quantity and modification of interest are concerned, the tenant's estate partakes of the nature of a freehold, but because it is held by a base instead of a free tenure, it is called a copyhold. Viewing his estate, then, through the medium of its holding or tenure, the tenant is merely a tenant-at-will; but it is to be remarked that this tenancy-at-will must be according to custom, which always regulates the copyholder's interest, upon which interest the lord has no power whatever to encroach. Free copyholds or customary freeholds, however, are held according to the custom of the manor, and altogether independently of the will of the lord, while copyholds of base tenure are held merely at the lord's will. The law certainly considers the freehold to be in the lord (except in the case of strict customary freeholds, when the freehold is in the tenant), and the tenant to possess his customary estate according to the quantity of interest it is intended he should possess, but the law will protect the copyholder, and will not permit him to be at the will or wayward caprice of the lord.

There are four circumstances necessary to the existence of a copyhold estate:—(1) A manor; (2) a court; (3) the land must be parcel of the manor; and (4) it must have been demised or demisable by copy of court roll from time immemorial.

A manor is essentially necessary, for all copyholds must be parcels of manors; and so is a court, for a copyholder has no other evidence of his title than the rolls of the court, which he can inspect and take copies of to use as he may think proper; and the Court of Queen's Bench (now the Queen's Bench Division of the High Court of Justice) will order the lord to allow such inspection, and if the lord then refuse, he will be attached. There are two courts incident to every manor —a court-baron or freeholder's court, and a

customary court, which only relates to the copyholders, who form the homage and transact the necessary business, the lord or his steward presiding as judge. Although these courts are essentially distinct, yet they are usually held at the same time, and the same roll serves to record the proceedings of both. In the court-baron the suitors are judges. In the customary court the suitors are assistants to the lord, or his steward, who is the judge. It is obvious that the lands granted must be parcel of a manor, seeing that a copyhold is part of the demesnes of a manor, but it is not absolutely necessary that the lands should continue parcel of the manor. And because this tenure derives its whole force from custom, the lands must have been demisable by copy of court roll from time immemorial, for the two pillars, upon which every custom rests, are common usage and existence time out of mind. No copyhold estate can, therefore, be created at the present day.

Copyhold customs are divided into two species:—(1) *General*, which extend to all manors in which there are copyholders, and are warranted by the common law, and of which the courts of law take judicial notice, without being specially pleaded; and (2) *Particular*, which prevail in some manors only, and which must be specially pleaded. They are construed strictly, and when they are contrary to reason, morality, or justice, or cannot be reduced to a certainty, the courts will not give effect to them.

The following services and incidents are by general custom annexed to copyholds:—

(1) Fealty, but the oath of fealty is now generally respited.

(2) Suit of Court, for every copyholder is bound to attend the lord's court, and be sworn of the homage.

(3) The copyholder is entitled to estovers, i.e., housebote, hedgebote, and ploughbote, unless restrained by particular custom.

(4) He cannot commit any kind of waste, unless there exists a particular custom to warrant it.

(5) Copyholds of inheritance are descendible according to the rules of the common law, unless the custom be otherwise, in which case the custom must prevail. The alterations effected by the 3 & 4 Wm. IV. c. 106, are applicable to this species of tenure.

(6) Copyholds are alienated by surrender, according to general custom, and they are devisable.

(7) A copyholder, by general custom, may make a lease for a year, and with the lord's license he may lease for any number of years.

(8) Copyholds are liable to all sorts of debts, by 3 & 4 Wm. IV. c. 104, and 1 & 2 Vict. c. 110.

(9) The widow of a copyholder, according to a particular custom, is entitled to a certain portion of her husband's lands, which varies in quantity, as a half, a third, a fifth, or the whole. It is called her free-bench. It is generally an estate for life, but is forfeited by a second marriage or incontinency.

The widow's free-bench is barred by a jointure, whether legal or equitable; or by the alienation of the copyhold lands by the husband, or even by an agreement to convey, or by forfeiture, or by a grant of the freehold by the lord to the husband, for then the copyhold is destroyed, or by a devise expressed to be in satisfaction of it.

(10) Copyholds, by special custom, are subject to courtesy, and, by the custom of some manors, the husband is entitled to courtesy, though he have no issue by his wife, but is forfeitable on a second marriage.

(11) Upon every descent of a copyhold estate, a sum of money or fine is due to the lord from the heir upon his admission, as a consideration for the renewal of a grant. If the heir refuse to be admitted, the lord may seize the estate to his own use. The lord is also entitled to fines upon all voluntary grants, upon the admission of tenants by the courtesy, the free-bench, and indeed upon alienation generally, the only exception being in case of bankruptcy. No fine is due upon the admission of a remainder-man, unless by special custom, because the admission of the tenant for life is generally deemed the admission of the remainder-man, nor are fines due upon a mere change of the tenant's interest, nor upon a covenant or agreement to surrender, because it is only due upon an actual admittance. Tenants in common pay this fine apportionably, each according to his share. Joint-tenants and coparceners pay a single fine for all. The practice as to the payment of the fine on the admittance of joint-tenants is this: two years' value is paid for the first life, half of that on the second, and a half of that half on the third, and so on, according to the number of the tenants. Joint-tenants succeed each other, by right of survivorship and without a new admittance, and fines are not due but upon admittance; the application, therefore, of the general rule to the case of joint-tenants would be unfair to the lord. By the custom of many manors, fines are due from copyholders on every change of the lord which happens by the act of God. The *quantum* of all these fines is not to exceed two years' value of the lands, which is recoverable by action of debt. See FINES IN COPYHOLDS.

(12) Besides a fine, a heriot is due to the lord on his tenant's death, though he be only a tenant for life, provided he be a *legal* and not an *equitable* tenant. It is usually the best beast or *averium*; it is sometimes the best chattel, as a jewel or a piece of plate, but it must be a personal chattel. Heriots are in some manors commuted to a customary composition in money, but it must be an indisputably ancient custom.

Copyholds were forfeited to the lord of the manor, and not to the Crown, unless by the express words of an Act of Parliament, by the tenant being attainted of treason or felony; and are still so by his attempting to alienate his estate by any mode which is contrary to custom, or by committing any kind of waste, by disclaiming the tenure, by refusing to perform the services.

Copyholds may be enfranchised, i.e., converted into free tenure, in several ways.

(1) If the copyholder surrender his estate to the rightful lord, to the use of the lord.

(2) If the copyholder release all his right and interest to the lord.

(3) If the lord convey the freehold of the copyhold to a stranger, and the copyholder release to the stranger.

(4) If the lord convey to the copyholder the land for an estate of freeholder, or even for a term of years.

(5) The efforts of the legislature have been, during the reign of Queen Victoria, much directed to these customary estates, which are, in fact, the remains of feudal slavery. Their chief inconveniences, as set forth by the Real Property Commissioners, in their third report, are the multiplicity and uncertainty of the different manorial customs on which the tenure depends—the check to agricultural improvements occasioned by the state of the law with respect to timber and minerals—the liability to arbitrary fines—the numerous payments due to stewards on account of fees, and the vexatious and oppressive character of heriots.

In the first instance, the commutation of manorial rights for a fixed rent-charge, and also enfranchisement was provided for by the Copyhold Act, 1841, 4 & 5 Vict. c. 35, afterwards amended by 6 & 7 Vict. c. 23, and 7 & 8 Vict. c. 55; but these acts were purely permissive, and merely facilitated the commutation and enfranchisement by the establishment of the 'Copyhold Commissioners' as a tribunal with settled procedure to determine differences between lords and tenants.

The act of 1852, 15 & 16 Vict. c. 51, 'to extend the provisions of the acts for the commutation of manorial rights, and for the gradual enfranchisement of Copyhold and Customary Tenure,' afterwards amended by 21 & 22 Vict. c. 94 (the Act of 1858), and more materially by the Act of 1887, 50 & 51 Vict. c. 73, provides for compulsory enfranchisement by either lord or tenant, preserving, however, under s. 48 of the Act of 1852, the lord's rights of way and sporting and to minerals, and also the lord's right in case of escheat for want of heirs.

By the act of 1887 a notice of the tenant's right to enfranchise 'upon paying the lord's compensation and the steward's fees' is to be given by the steward of the manor to every tenant admitted in or after 1888 (admissions may be by attorney), rent charges are made redeemable, limited owners of enfranchised land may charge the land with the money paid for the enfranchisement, and the 'land commissioners' (see next title but one) are directed (see s. 30) to 'frame and cause to be printed and published such a scale of compensation for the enfranchisement of land as in their judgement will be fair and just and will facilitate enfranchisement,' and also a scale of allowances to valuers, and 'all such directions for the guidance of lord, tenant, and valuers, as the commissioners may deem necessary.' But it is expressly provided that these scales 'are to be for guidance only.' The scales now in force are obtainable at the office of the Land Commissioners, 3, St. James's Square, London.

The effect of enfranchisement is, that the lands become freeholds, but with the saving of all commonable rights and beneficial limitations. Consult *Scriven on Copyholds*, and *Chitty's Statutes*, vol. i., tit. '*Copyhold*.'

Copyhold Commissioners. The tithe commissioners for England and Wales, appointed under the Copyhold Act of 1841 to be the commissioners for carrying that act into execution.

Copyhold Inclosure and Tithe Commissioners, a board constituted under 8 & 9 Vict. c. 118. The powers of these commissioners, of the copyhold commissioners, and of the tithe commissioners, are now vested in one board called 'the Land Commissioners.' See 14 & 15 Vict. c. 53; 21 & 22 Vict. c. 31; 23 & 24 Vict. c. 81; and 25 & 26 Vict. c. 73, the preceding title, and LAND COMMISSIONERS.

Copyright, an incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing his own original work which the statute law first gave to an author in 1709, by 8 Ann. c. 19, for the term of 14 years. Whether the right existed at common law is a long vexed and still undetermined question. See *Jeffries* v. *Boosey*, 4 *H. L.* 815.

After two further extensions in 1801 and 1814, the term of copyright was still further extended in 1842 by 5 & 6 Vict. c. 45, the present statute, under which the copyright of every book, published in the lifetime of its author, endures for his life, and for seven years longer, or (if the seven years shall expire before the end of forty-two years from the publication) for forty-two years; if the work is posthumous, the copyright endures for forty-two years from the publication, and belongs to the proprietor of the manuscript.

With regard to magazine, etc., articles, composed by the authors for payment on the terms that the copyright shall belong to the proprietor of the magazine, such proprietor has upon publication the same rights as if he were the author of the whole work, except that after 28 years from publication of the work (not being an encyclopædia), the right of publication of the article, etc., in a separate form reverts to the author, and also except that during the 28 years the proprietor may not publish the articles, etc., singly, without the consent of the author or his assigns.

The remedy given for a book unlawfully printed within the British dominions is an action on the case, to be commenced within twelve calendar months. Equity will also afford relief by special injunction, to restrain the progress of the injury, and to compel an account of the profits arising from the invasion. The title of the work must be entered at Stationers' Hall. As to those unlawfully reprinted in any place out of the British dominions, and imported into the United Kingdom, they may be seized, as forfeited, by any officer of the custom or excise, and the offenders are liable to penalties. A copyright is assignable by an instrument in writing, which does not require to be under seal. Sections 12 and 31 of the 5 & 6 Vict. c. 45, provide a mode of statutory assignment by an entry in the register of the assignment, which entry has the same effect as a deed.

The sole liberty of printing and publishing lectures is secured to lecturers by 5 & 6 Wm. IV. c. 75—the term of copyright being 28 years; dramatic pieces and musical performances are protected by 3 & 4 Wm. IV. c. 15; 5 & 6 Vict. c. 45, ss. 20, 21; and 38 & 39 Vict. c. 12—the term of copyright being the same as that in books; engravings and prints by 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 Geo. III. c. 57; sculptures, models, copies, and casts, by 54 Geo. III. c. 56—the term of copyright being 14 years; and to paintings, drawings and photographs, by 25 & 26 Vict. c. 68, which first gave copyright to these particular works of art.

Copyright in Designs is also protected by Part III. of the Patents, Designs and Trade Marks Act, 1883, 46 & 47 Vict. c. 57.

As to International Copyright, see the International Copyright Act, 1886, 49 & 50 Vict. c. 33; as to Colonial Copyright, see 10 & 11 Vict. c. 95; and (as to Canada) 38 & 39 Vict. c. 53.

International Copyright has during the present century been very generally recognised, but until 1891 the United States of America refused to recognise it. In that year, however, an Act was passed granting it, with the very serious restriction, in the case of books, that the books must have been printed from type set within the limits of the United States.

Proprietors of copyrights in work published in this country must give notice to the Commissioners of Customs in order to have such works inserted in the Customs of copyright works prohibited to be imported into United Kingdom or colonies. See the works of *Copinger*, *Scrutton*, *Shortt*, or *Slater on Copyright*; *Chitty's Statutes*, vol. i., tit. '*Copyright*'; also Report of Royal Commission of 1878, containing a digest prepared by Stephen J. when at the bar. A Government Consolidation Bill founded on this Report was introduced in 1879, and a bill substantially in accord with it was laid before the Board of Trade on behalf of the Incorporated Society of Authors in 1886, before the passing of the International Copyright Act of that year. In 1891, a consolidating and amending Bill, mainly founded on the same report, was read a second time in the House of Lords on the motion of Lord Monkswell, and on behalf of the same Society.

Coraage, an extraordinary imposition, upon some unusual occasion; it seems to be of certain measures of corn.—*Blount.*

Coram nobis, before us ourselves [the king, i.e., in the King's or Queen's Bench].

Coram non judice (*in presence of a person not a judge*). When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void.

Coram paribus (*before his peers*).

Cord of wood, a quantity of wood eight feet long, four feet broad, and four feet high.

Cordiner, or **Cordwainer** [fr., *cordonnier*, Fr.; fr. *cordouan*, Old Fr., originally leather from Cordova], a shoemaker.

Co-respondent, the man charged with adultery, and to be made, in the absence of special grounds, a party to a suit by a husband for dissolution of marriage. See 20 & 21 Vict. c. 85, s. 28. By s. 59 of the same act the independent action of criminal

conversation, by which the husband formerly recovered damages from the adulterer, is abolished, as by s. 33 the husband may claim damages from the co-respondent.

Coretes [fr. *cored*, Brit.], pools, ponds, etc.

Corium forisfacere, to forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping.

Corn-rent. It was created by 18 Eliz. c. 6, by which it was directed that one-third of the whole rent then paid on college leases should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6*s.* 8*d.*, or a quarter of malt for every 5*s.*; or that the lessees should pay the same according to the price that wheat or malt should be sold for in the market next to the respective colleges, on the market day before the rent becomes due.—2 *Bl. Com.* 609.

Corn Returns. By the Corn Returns Act, 1882, 45 & 46 Vict. c. 37, consolidating with amendments 5 & 6 Vict. c. 14, and 27 & 28 Vict. c. 87, certain towns as named by Order in Council from time to time and being not less than 150 nor more than 200 in number, supply through 'inspectors of corn returns' weekly returns of the purchases of British corn made in such towns. The inspectors make up these returns from the dealers and corn factors, etc., who are bound by s. 11 of the act to supply particulars under a penalty not exceeding 20*l.* Averages are computed by the Board of Trade from the weekly returns, and published in the *London Gazette.*

Corn Tax Abolition Act, 10 & 11 Vict. c. 46.

Cornage [fr. *cornu*, Lat., a horn], a kind of tenure in grand serjeanty, the service of which was to blow a horn when any invasion of the Scots was perceived; and by this tenure many persons held their lands northward about the place commonly called Picts' Wall. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of *Cornagium.* —*Camd. Brit.* 609.

Cornare, to blow on the horn.

Cornwall, Duke of, one of the titles of the eldest son of the reigning sovereign of the United Kingdom. He is Duke of Cornwall by inheritance, and is usually made Prince of Wales and Earl of Chester by special creation and investiture.—1 *Bl. Com.* 225. Cornwall is a royal duchy, the revenues of which belong to the Prince of Wales for the time being. See STANNARY.

Cornwall Submarine Mines Act, 1858, 21 & 22 Vict. c. 109, explained by 23 & 24 Vict. c. 53.

Corodio habendo, a writ to exact a corody of an abbey or religious house.—*Reg. Orig.* 264.

Corody, or **Corrody** [fr. *conredium*, *corredium*, *conrodium*, *corrodium*, Monk. Lat.; *corredare*, Ital., to fit out], a sum of money or allowance of meat, drink, and clothing due to the Crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice.—*F. N. B.* 250.

Corollary, a collateral consequence.

Corona mala, the clergy who abused their character were so called.—*Blount.*

Coronare filium, to make one's son a priest. *Homo Coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns.—*Cowel.*

Coronation oath. At the public ceremony of crowning a sovereign of this kingdom in acknowledgment of his right to govern the kingdom, the sovereign swears to observe the laws, customs, and privileges of the kingdom, and to maintain the Protestant reformed religion. The exact form of the oath is prescribed by 1 W. & M. c. 6.

Coronatore eligendo, the writ issued to the sheriff, commanding him to proceed to the election of a coroner.

Coronatore exonerando, a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has been (see Coroner's Act, 1887, s. 8) guilty of extortion, etc.

Coroner, a very ancient officer at the common law, so called because he has principally to do with pleas of the Crown, or such wherein the sovereign is more immediately concerned, appointed in boroughs by the Borough Council under ss. 171—174 of the Muncipal Corporations Act, 1882, and in counties by the County Council, under s. 5 of the Local Government Act, 1888, prior to which act county coroners were elected by the freeholders in each county.

An early definition of his duties was provided by the statute 'De Officio Coronatoris,' 4 Ed. I., repealed by the consolidating 'Coroner's Act, 1887,' which codifies the law of the coroner's jurisdiction as follows:—

'Where a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause

to suspect that such person has died either a violent or an unnatural death, or has died a sudden death the cause of which is unknown, or that such person has died in prison or in such place or under such circumstance as to require an inquest in pursuance of any act, the coroner, whether the cause of death arose within his jurisdiction or not, shall issue his warrant for summoning not less than 12 nor more than 23 men to appear before him to inquire as jurors touching the death.'

The coroner also has jurisdiction to inquire concerning 'treasure trove' (see that title), and acts as substitute for the sheriff when that officer is incapacitated by interest.—*Jervis on Coroners; Com. Dig. Officer*, 9. For the Acts before 1887, see *Chitty's Statutes*, vol. i., tit. '*Coroner*'; and see *ib.* 'Continuation for 1887' for the Act of 1887.

Corporal, an epithet for anything that belongs to the body, as corporal punishment. See WHIPPING.

Corporal oath, so called because the party taking it lays his hand on the New Testament.

Corporate name. When a corporation is erected a name is always given to it, or supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. But some name is the very being of its constitution; and though it is the will of the sovereign that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. The name of incorporation, says Coke (10 *Rep.* 28), is as a proper name, or name of baptism, and therefore when a private founder gives his college or hospital a name, it does it only as a godfather, and by the same name the king baptises it on incorporation. Certain banking and other companies have power to sue and be sued in the name of a public officer.

Corporate Office, in the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, by s. 7, means the office of 'mayor, alderman, councillor, elective auditor, or revising assessor.'

Corporation or **Body Politic,** artificial persons established for preserving in perpetual succession certain rights, which being conferred on natural persons only, would fail in process of time. It is either *aggregate*, consisting of many members, or *sole*, consisting of one person only. It is also either *spiritual*, erected to perpetuate the rights of the church, or *lay*—subdivided into *civil*, erected for many temporal purposes, and *eleemosynary*, to perpetuate founders' charities. It is by virtue of the sovereign's prerogative, exercised by a charter, or of an Act of Parliament, or of prescription, that the artificial personage called a corporation, whether sole or aggregate, civil or ecclesiastical, is created. The royal charter gives it a legal immortality, and a name by which it acts and becomes known. It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul nor tangible form, so it can neither be outlawed nor arrested; it only enjoys a legal entity, sues, and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law. The duty of a corporation is to answer the ends of its institution—to enforce which it may be visited: if spiritual, by the ordinary; if lay, by the founder or his representatives; viz., the *civil* by the queen (who is the *fundator incipiens* of all), represented in the Queen's Bench: the *eleemosynary*, by the endower (who is the *fundator perficiens* of such), or by his heirs or assigns. The distinction between corporations and trading partnerships is, that in the first the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity, their share in the capital only being at stake: but in the latter the law looks not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm to the full extent of their assets.

It is a general rule that a corporation must contract under its common seal, but whenever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed: e.g., the retainer of an inferior servant, the acceptance of bills of exchange, or making of promissory notes by companies incorporated for the purpose of trade, or the doing of acts frequently occurring; in these cases, the affixing of the common seal is not necessary; and see s. 97 of the Companies Clauses Act, 1845, s. 37 of the Companies Act, 1862, and s. 174 of the Public Health Act, 1875.

The word 'person' in any Act passed in or after 1890 includes any body of persons corporate or unincorporate.—*Interpretation Act*, 1889, s. 19.

A corporation may be dissolved by statute, by death of all the members, by surrender of

its franchise to the Crown, by forfeiture of its charter, and by bankruptcy or insolvency.—1 *Bl. Com.* c. xviii.; *Grant on Corporations.* See also JOINT STOCK COMPANIES, *post.*

Corporation Act, the Act 13 Car. II. s. 2, c. 1, by which it was provided that no person should thereafter be elected to office in any corporate town, who should not within one year previously have taken the Sacrament of the Lord's Supper according to the rites of the Church of England.—4 *Bl. Com.* 58. An obligation to subscribe a declaration was substituted for the necessity of taking the Sacrament by 9 Geo. IV. c. 17, and the Corporation Act itself, with a body of similar acts, was repealed by 34 & 35 Vict. c. 48.

Corporations, Municipal. The many statutes affecting these bodies are consolidated by the Municipal Corporations Act, 1882. See MUNICIPAL CORPORATION.

Corporeal hereditament, that subject of property which is comprised under the denomination of things real.

Corps diplomatique [Fr.], the body of ambassadors and diplomatic persons.

Corpse. Taking up a corpse for the purpose of dissection, or otherwise, is a misdemeanour at common law, punishable by fine or imprisonment. Refusing to bury dead bodies by those whose duty it is to do so, is punishable by the temporal courts, independently of spiritual censures, on indictment, or information. The Anatomy Act, by which dissection is made legal, is the 2 & 3 Wm. IV. c. 75.

A gaoler cannot detain the dead body of a person in his custody under a *ca. sa.* until the executors of the deceased person satisfy his pecuniary claims upon the deceased.—*R.* v. *Fox,* 2 *Q. B.* 246; see also *Jones* v. *Ashburnham,* 4 *East* 455.

Corpus Christi Day, a feast instituted in 1264, in honour of the sacrament.—32 *Hen. VIII.* c. 21.

Corpus cum causâ, a writ issuing out of Chancery to remove both the body and record touching the cause of any man lying in prison.—*F. N. B.* c. 21.

Corpus humanum non recipit æstimationem. Hob. 59.—(A human body is not susceptible of appraisement.)

Corpus juris canonici. See CANON LAW.

Corpus juris civilis. The three great compilations of Justinian, the Institutes, the Pandects, and the Code, together with the Novellæ, form one body of Law, and were considered as such by the glossatores, who divided it into five volumina. The Pandects were distributed into five volumina, under the respective names of Digestum Vetus, Infortiatum, and Digestum Novum. The fourth volume contained the first nine books of the Codex Repetitæ Prælectionis. The fifth volume contained the Institutes, the Liber Authenticorum or Novellæ, and the three last books of the Codex. The division into five volumina appears in the oldest editions; but the usual arrangement now is the Institutes, Pandects, the Codex, and Novellæ. The name Corpus Juris Civilis was not given to this collection by Justinian, nor by any of the glossatores. Savigny asserts that the name was used in the twelfth century: at any rate, it became common from the date of the edition of D. Gothofredus of 1604.—*Smith's Dict. of Antiq.*

Correction, House of, a prison for the reformation of petty offenders.—See HOUSE OF CORRECTION.

Corrector of the staple, a clerk belonging to the staple, to write and record the bargains of merchants there made.—27 *Edw. III.* cc. 22, 23.

Corregidor, a Spanish magistrate.

Corroboration, evidence in support of principal evidence, e.g., in addition to that of the mother, to charge the father of an illegitimate child under the Bastardy Acts. In an action for breach of promise of marriage the plaintiff may give evidence, but cannot recover a verdict unless corroborated by other material evidence in support of the promise.—32 & 33 *Vict* c. 68, s. 2. See UNUS NULLUS RULE.

Corrupt practices. At elections these are treating, undue influence, bribery, and personation.—*Corrupt and Illegal Practices Prevention Act,* 1883, 46 & 47 Vict. c. 51, s. 3 (Parliamentary). Municipal Elections Corrupt and Illegal Practices Act, 1884, 47 & 48 Vict. c. 70 (Municipal and School Board, etc., Elections).

Corrupt practices by or in connection with members of public bodies such as town councils, county councils, local boards, vestries, etc., are punishable under the Public Bodies Corrupt Practices Act, 1889, 52 & 53 Vict. c. 69, by which any member of such body soliciting or receiving, and any person promising, giving any member of such body any advantage as an inducement to do or not to do anything in respect of a transaction in which the public body is concerned, are alike punishable.

Corruptio optima pessima.—(Corruption of the best is worse.)

Corruption of blood (now abolished, see *infra*), one of the immediate consequences of attainder for treason or felony. The blood of the attainted person was said to be corrupted or attainted both upwards and downwards, so that he could neither inherit lands nor

hereditaments, retain the possession of those in his possession, nor transmit them by descent to any heir, but the same escheated to the lord of the fee, subject to the king's superior right of forfeiture.—4 *Bl. Com.* 388. By 54 Geo. III. c. 145, it was provided, that no attainder for felony, except for *treason* or *murder*, shall extend to the disinheriting of any person, nor to the prejudice of the right of any persons other than the right of the offender, during his life only. By 3 & 4 Wm. IV. c. 106, when the person from whom the descent of any land is to be traced shall have had any relation, who having been attainted shall have died before such descent shall have taken place, such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated, in consequence of such attainder, before January 1, 1834. By 13 & 14 Vict. c. 60, s. 46, no land, chattels, or stock vested in any person upon any *trust*, or by way of *mortgage*, or any profits thereof, shall escheat or be forfeited by reason of the attainder or conviction for *any* offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place; and finally, by 32 & 33 Vict. c. 23, it is provided that conviction for treason or felony shall not cause attainder or corruption of blood or any forfeiture; but this act is not retrospective.

Corselet [fr. *corpusculum*, Lat., a little body], ancient armour which covered the body.

Corsepresent [fr. *corps*, Fr., body], a mortuary, thus termed, because when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corsepresent was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne st. 2, c. 6.—2 *Bl. Com.* 426.

Corsned bread [fr. *corsian*, to curse, and *snaed*, a morsel, A.S.; *panis conjuratus*, or *offa execrata*, Lat., the morsel of execration, or ordeal bread]. It was a kind of superstitious trial or ordeal used among the Saxons, to purge themselves of any accusation, by taking a piece of barley bread and eating it with solemn oaths, curses, and execrations, that it might prove poison, or their last morsel, if what they asserted, or denied, were not true.—4 *Bl. Com.* 345, 414; and see *Norton's City of London*, 3rd ed., 36, 265.

Cortes, the assembly of the states of Spain or Portugal, answering in some measure to the parliament of Great Britain.

Cortis, a court or yard before a house.—*Blount.*

Cortularium, or **Cortarium**, a yard adjoining to a country farm.—*Old Records.*

Corvee [Fr.], a feudal service, as to repair roads, etc.

Cosduna, custom or tribute.

Cosenage, or **Cosinage**, kindred, cousinship. Also a writ that lay for the heir where the *tresail*, i.e., the father of the *besail*, or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated.—*F. N. B.* 221.

Cosening, Cozenage [fr. *cosen*], cheating, defrauding.

Coshering, a feudal custom, whereby the lords may lie and feast themselves and their followers at their tenants' houses, etc., forbidden by many acts of the Irish Parliament.

Cosmus [fr. κόσμος, Gk.], clean.—*Blount.*

Coss, a term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts.

Costard, a head.—*Shaksp.* Also a kind of apple.

Costera, sea coast.

Cost-Book Mining Companies. They are formed thus:—A number of adventurers, who have obtained permission from the landowner to work a lode, assemble; they decide on the number of shares into which their capital is to be divided, and the number to be allotted to each; they appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, and enter in a book, called the cost-book, the minutes of their proceedings, which are signed by all present. A license to try for ores, for twelve months, or some short period, is then obtained; followed, if the search be promising, by a sett, that is, a lease of the minerals, or a license to dig, or both, granted by the landowner to the purser, or to one or two of the adventurers, without any declaration or trust on their part for the rest, or for any other person, for a term of years, commonly twenty-one, but with a stipulation for the annual payment to the landowner of some portion of the ore raised.

The cost-book contains the names of all the shareholders, and the number of shares held by each is set opposite to his name. In a cost-book partnership, a shareholder may get rid of his shares, and with them his liabilities, so far as his partners are concerned, without their consent, either by transfer or simple relinquishment, provided the cost-book regulations do not prohibit such a course; in the former case the fact of transfer being

entered by the purser in the cost-book, and in the latter notice being given to the purser of his having so relinquished his shares, and all his claims upon the mine.

There being a purser or manager of the mine, all acts are in general done by him, such as ordering the supply of the necessary materials for working the mine, hiring of labour, etc.; and a shareholder has no power to bind his co-shareholders by any contract for materials, etc., not necessary, nor for money lent, nor upon bills of exchange; nor has the purser power to make them liable for money lent, or upon bills of exchange.

The rules are simple, and all the transactions of the partnership are entered in the cost-book. All the shareholders meet and order their general affairs, without the assistance of any directing body, and consider and resolve upon the purser's reports made to them at their meetings, which are seldom at greater intervals than two months. Sometimes there is a committee of management in a cost-book mine; but they are only appointed from general meeting to general meeting, have no power to make calls or declare dividends, and all their acts are subject to the review of a general meeting.

The mode of transferring shares is simple, and effected with great facility, and in any form, and the mere entry by the purser in the cost-book of the fact of transfer is sufficient to bind all parties, and constitutes the introduction of a new partner into the concern.

Although there are several theories of the cost-book principle of working mines, the meaning of which the Courts are not bound to take judicial notice of (*Re Gt. Cambrian, Hawkins' case*, 2 *Kay & J.* 138), yet it appears clear, that whatever may be the rules and regulations between the adventurers themselves, each shareholder is liable to be sued by a creditor who has furnished the mine with necessaries for its due working, ordered according to the customary course in such concerns, and this whether the creditor knew at the time of crediting the mine that he was a shareholder or not.—See *Collier on Mines*, 93.

Co-stipulator, a joint promisee.

Costs [*expensæ litis*, Lat.], expenses incurred in litigation or professional transactions, consisting of money paid for stamps, etc., to the officers of the court, or to the counsel and solicitors, for their fees, etc. Costs in actions are either between *solicitor* and *client*, being what are payable in every case to the solicitor, by his client, whether he ultimately succeed or not; or between *party and party*, being those only which are allowed in some particular cases to the party succeeding against his adversary, and these are either *interlocutory*, given on various motions and proceedings in the course of the suit or action, or *final*, allowed when the matter is determined.

Neither party was entitled to costs at Common law, but the Statute of Gloucester (6 Edw. I. c. 4) gave costs to a successful plaintiff, and 2 & 3 Hen. VIII. c. 6, and 4 Jac. I. c. 3, gave costs to a victorious defendant.

Proceedings between the Crown and a subject were formerly an exception to this rule, but by 18 & 19 Vict. c. 90, costs are paid by either side in suits by the Crown, and by 23 & 24 Vict. c. 34, in petitions of right.

There were many cases of vexatious proceedings, in which the legislature formerly provided that the party in fault should be punished by the payment to his adversary of double or treble costs; but all such provisions are repealed by 5 & 6 Vict. c. 97, and the adversary is entitled only to a full and reasonable indemnity, to be taxed by the proper officer, which taxation is, as in ordinary cases, subject to review.

Several acts have also been passed to restrain the bringing vexatious actions, and needless costliness in litigation. See 43 Eliz. c. 6, s. 2; 22 & 23 Car. II. c. 9; 8 & 9 Wm. III. c. 11, s. 4; 3 & 4 Vict. c. 24; enactments superseded by s. 5 of the County Court Act, 1867 (30 & 31 Vict. c. 142), amended by the County Courts Act, 1882, and repealed and re-enacted with further amendments by s. 116 of the County Courts Act, 1888; also the Slander of Women Act, 1891.

In Equity the person who failed in the suit must have been deemed liable to the costs, yet the costs rested entirely in the discretion of the Court, for the *primâ facie* claim to costs might be rebutted by the particular circumstances of the case, and it was for the Court to decide whether those circumstances were or were not sufficient to rebut the claim. See *Morgan and Davey on Costs*.

By R. S. C. 1883, Ord. LXV., 'the costs of and incident to all proceedings in the High Court *shall be in the discretion of the Court*'; but there is a saving for 'the right of a trustee, mortgagee, or other person to costs out of a particular estate or fund,' and it is also provided that 'where any action is tried by a jury, the costs shall follow the event, unless the judge by whom such action is tried, or the Court, shall for good cause otherwise order.'

By the Judicature Act 1890, 53 & 54 Vict. c. 44, s. 5, however, it is provided as follows:—

'Subject to the Supreme Court of Judicature Acts *and the Rules of Court made thereunder*, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of, and incident to, all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent such costs are to be paid.'

As to costs in criminal cases, see 7 Geo. IV. c. 64; 7 Wm. IV. and 1 Vict. c. 44; 11 & 12 Vict. c. 12; 12 & 13 Vict. c. 76; 13 & 14 Vict. c. 101; 14 & 15 Vict. cc. 11, 19, 55; and 29 & 30 Vict. c. 52. By 30 & 31 Vict. c. 35, s, 2, on acquittal of a person indicted, who has not been committed or held to bail, the Court may order the prosecutor to pay costs to the accused, if it think the prosecution unreasonable; and s. 5 gives the Court power to allow the expenses of witnesses for accused persons, where they have been bound by recognizance.

As to the taxation of solicitors' costs, see 6 & 7 Vict. c. 73; 22 & 23 Vict. c. 127; and 33 & 34 Vict. c. 28. And see also TAXATION.

Costs de incremento, *cost of increase*, i.e., those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, Court fees, etc.

Co-surety, a fellow-surety.

Cotarius, a cottager, who held in free socage, and paid a stated fine or rent in provisions or money, with some occasional personal services.

Cote, or **Cot** [fr. *koti*, Fin.], cottage.

Cotellus, or **Coteria**, a small cottage, house, or homestall.—*Cowel.*

Coterellus, a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure.

Coteswold [fr. *cote* and *wold*, Sax.], a place where there is no wood.

Cotland and **Cotsethland**, land held by a cottager, whether in socage or villenage.

Cotsethla, Consetle, the little seat or mansion belonging to a small farm.

Cotsethus, a cottage-holder, who by servile tenure was bound to work for the lord.—*Cowel.*

Cottage, a small house without lands belonging to it.—*Sh. T.* 94; 15 *Geo. III.* c. 32. As to cottage allotments for the benefit of the poor, see 2 & 3 Wm. IV. c. 42; 5 & 6 Vict. c. 69; and 8 & 9 Vict. c. 118, ss. 108—112; and as to compensation for fruit, see ALLOTMENTS.

Cottier tenure, one where a labourer makes his contract for land without the intervention of a capitalist farmer, and where the conditions of the contract, especially the amount of rent, are determined not by custom, but by competition. Also a class of subtenants, who rent a cottage and an acre or two of land from small farmers.—*Irish.* 1 *Mill's Pol. Eco.* 383.

Cotton Cloth Factories, are in addition to the general provisions of the Factory and Workshop Act, 1878 (see *Factory*), specially regulated by the Cotton Cloth Factories Act, 1889, 52 & 53 Vict. c. 62, in respect to restricting the amount of moisture in the atmosphere, the admission of fresh air, and the prevention of the inhalation of dust.

Cotuca, coat armour.

Cotuchans, boors, husbandmen.—*Domesday.*

Couchant, lying down; squatting.

Coucher, or **Courcher**, a factor who continues abroad for traffic, 37 Ed. III. c. 16; also the general book wherein any corporation, etc., register their acts.—3 & 4 *Ed. VI.* c. 10.

Council, an assembly of persons for the purposes of concerting measures of state or municipal policy—hence called *councillors.*

A municipal council, commonly called a town council, consists of the mayor, aldermen, and councillors, the councillors being elected by the ratepayers (women included), and the aldermen being elected by the councillors, the term of office of a councillor being three years, and that of an alderman six. One-third of the councillors go out every year, and one-half of the aldermen (who always number one-third of the councillors) in every third year. See Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, ss. 10-14, and as to county councils, see that title.

Council of India. See INDIAN COUNCILS ACT.

Council of Medical Education, 25 & 26 Vict. c. 91.

Councils of Conciliation Act, 1867, 30 & 31 Vict. c. 105.

Counsel, or **Counsellor**, a person retained by a client to plead his cause in a court of judicature; a barrister; an advocate. See BARRISTER.

Count. The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action, were the counts of the declaration. Used also to signify the several parts of an indictment, each charging a distinct offence.

Countee, or **Count** [fr. *comte*, Fr.; *comes*, Lat.], the most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatûs*, and had the charge and custody of the county; but this authority is now vested in the sheriff.—9 *Rep.* 46.

Countenance [fr. *contenance*, Fr., *contineo*, Lat., to hold together], credit; estimation.

Counter, the name of two prisons in London, the Poultry Counter, and Wood Street Counter, afterwards consolidated into one new-built prison, for the use of the city, to confine debtors, peace-breakers, etc.

Counterclaim. It is provided by R. S. C. 1883, Ord. XIX., Rule 3, that a defendant in an action may set off, or set up by way of counterclaim, against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. See SET-OFF.

As to counterclaim in an inferior court involving matters beyond the jurisdiction of the Court, see Jud. Act, 1873, s. 90.

Counter-deed, a secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

Counterfeit, an imitation of something made without lawful authority, and with a view to defraud by passing the false for the true. As to counterfeiting coin, see COIN.

Counterfesance [Fr.], the act of forging.

Countermand, the revocation of an act; where a thing done is afterwards, by some act or ceremony, made void by the person who did it, it is either actual, by deed, or implied by law. No notice of trial may be countermanded except by consent or by leave of the Court or a judge, which leave may be given subject to such terms as to costs or otherwise as may be just (R. S. C. 1883, Ord. XXXVI., r. 19). See NOTICE OF TRIAL.

Countermark, a sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

Counterpart, the corresponding part or duplicate; the key of a cipher. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts. A counterpart is the best evidence against the party executing it.

Counterplea. When the tenant in any real action, tenant by the courtesy or in dower, in his answer and plea vouched any one to warrant his title, or prayed in aid of another who had a larger estate, as of him in reversion, etc.; or where a stranger to the action came and prayed to be received to save his estate; then that which the demandant alleged against it, why he should not be admitted, was called a counterplea; it was a replication to *aid prier*, and was called counterplea to the voucher. But when the voucher was allowed, and the vouchee came and demanded what cause the tenant had to vouch him, and the tenant showed his cause, whereupon the vouchee pleaded anything to avoid the warranty, that was termed a counterplea of the warranty.—*Termes de la Ley.* Obs.

Counter-rolls, the rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc.—3 *Edw. I.* c. 10.

Counter security, a security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

Counter-sign, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it; e.g., the order of a town council for payment of money out of a 'borough fund' must be signed by three members of the town council, and countersigned by the town-clerk, by s. 141 of the Municipal Corporations Act, 1882.

Counting-house of the Queen's Household, usually called the Board of Green Cloth, where sit the lord-steward and treasurer of the Queen's house, the comptroller, master of the household, cofferer, and two clerks of the Green Cloth, etc., for daily taking the accounts of all expenses of the household, making provisions, and ordering payment. —39 *Eliz.* c. 7.

Countors [fr, *contours*, Fr.], serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees.—1 *Inst.* 17.

Country, a name for the jury, as coming from the neighbouring country, or surrounding parts of the county.

Country, Custom of the. See CUSTOM.

County [fr. *comté*, Fr.; *comitatus*, Lat.], a shire or portion of country comprehending a great number of hundreds. England is divided into forty counties or shires, Wales into twelve, and Scotland into thirty. It seems probable that the realm was originally divided into counties with a view to the convenient administration of justice, the judicial business of the kingdom having, in former

times, been chiefly despatched in local courts held in each different county, before the sheriff as its principal officer. His duties are now more ministerial than judicial. The larger counties are subdivided, for purposes of parliamentary representation. As to the divisions of counties for holding petty and special sessions, see 9 Geo. IV. c. 43; 10 Geo. IV. c. 46; 6 & 7 Wm. IV. c. 12; 22 & 23 Vict. c. 65.

County Boroughs. The 61 Boroughs, named in sched. 3 of the Local Government Act, 1888, 51 & 52 Vict. c. 41, which either being counties of themselves (see COUNTY CORPORATE) or containing a population of not less than 50,000 inhabitants, are constituted by s. 31 of the Act administrative counties of themselves. See LOCAL GOVERNMENT.

County Buildings. See 7 Geo. IV. c. 63; 7 Wm. IV. and 1 Vict. c. 24; 2 & 3 Vict. c. 69; 10 & 11 Vict. c. 28; the 'County Buildings (Loans) Act, 1872,' and the 'County Debentures Act, 1873,' repealed and replaced by the 'Local Loans Act, 1875.' See s. 35.

County corporate. To certain cities and towns the sovereigns of England have, out of special grace and favour, granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Twelve cities and five towns are counties of themselves, and have, consequently, their own sheriffs. The cities are London, Chester, Bristol, Coventry, Canterbury, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York. The towns are Kingston-upon-Hull, Nottingham, Newcastle-upon-Tyne, Poole, Southampton.

County Councils. The elective bodies established by the Local Government Act, 1888, 51 & 52 Vict. c. 41, to manage certain specified administrative business of each county (see LOCAL GOVERNMENT), formerly managed by the justices of the peace (who are nominated by the Crown) in quarter sessions, and other administrative business mentioned in the Act, and consisting of 'the chairman, aldermen, and councillors.'

The councillors are elected, for separate 'electoral divisions,' under the County Electors Act, 1888 (see that title), the qualification for electors being similar to that of burgesses in boroughs, and the qualification for being elected similar to that of councillors in boroughs, with the addition that ministers of religion are not disqualified, and that peers owning property in the county and persons registered as parliamentary voters in respect of the ownership of property in the county are qualified, as also by s. 8 of the Army Act, 1891, are officers in the army. They are elected for three years, and then retire together. The ordinary day of election and retirement, which by the Local Government Act, 1888, was the 1st of November, was, by the County Councils (Elections) Act, 1891, changed to the 8th of March.

The aldermen, who are termed 'county aldermen,' are elected by the councillors as borough aldermen are, from amongst the councillors or persons qualified so to be, the qualification for being elected being similar to that of county councillors. They are elected for 6 years, and one-half of the number goes out in every third year.

The chairman corresponds to the Mayor in a borough council, and is elected by the council from among the aldermen or councillors, 'or persons qualified to be such.'

The administrative business transferred to the County Councils from the justices of the peace consists of business as to

(1) Making of rates;
(2) Borrowing of money;
(3) Supervision of county treasurer;
(4) Management of county halls and other buildings;
(5) Licensing of houses for music and dancing and of racecourses;
(6) Maintenance and management of pauper lunatic asylums;
(7) Maintenance of reformatory and industrial schools;
(8) Management of bridges;
(9) Regulation of fees of inspectors, analysts, and other officers;
(10) Control of officers paid out of the county rate;
(11) Coroner's salary, fees, and district;
(12) Parliamentary polling districts and registration;

and other matters specified in the 3rd section of the Local Government Act, 1888.

Other administrative business assigned to County Councils is the appointment of coroners (which is transferred from the freeholders of each county), the licensing of theatres, and the supervision of the trade in explosive substances (which are transferred from the justices of the peace out of session), and the maintenance of main roads.

The powers of justices out of session of appointing, etc., the county police belong to the quarter sessions and the county council jointly, and are exercised by a standing joint committee of the two bodies.

In addition to this business *ipso facto* transferred, the Act of 1888 gives power to the Local Board, by Provisional Order, to be of no effect until confirmed by Parliament,

from time to time to transfer to the County Councils:—

Any powers of the Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Educational Department, or any other Government Department 'as are conferred by any statute and appear to relate to matters arising within the county, and to be of an administrative character,' and also any powers within the county of any commissioners of sewers, conservators, or other public body, except a municipal corporation, urban or rural authority, school board, or board of guardians.

County Court. The old County Court was a tribunal incident to the jurisdiction of a sheriff, but was not a Court of Record. Proceedings were removable into a superior court, by *recordari facias loquelam*, or writ of false judgment. Outlawries of absconding offenders are here proclaimed; and also elections of knights of the shire, coroners, etc., take place, but the judicial business has been for the most part transferred to the

County Courts, several inferior tribunals which have been established throughout England. They were first established in 1846 by 9 & 10 Vict. c. 95, 'the Act for the more easy recovery of Small Debts and Demands in England,' repealed and re-enacted with fourteen amending Acts by the Consolidating and Amending County Courts Act, 1888, 51 & 52 Vict. c. 43, the main provisions of which acts are as follows:—

The area of the jurisdiction of each Court is as fixed by Order in Council from time to time (s. 4).

The judges, who are appointed by the Lord Chancellor, and may not exceed sixty in number, must be barristers of at least seven years' standing (s. 8), who must not practise at the bar, or act as arbitrators for any remuneration to themselves (s. 14), and when permanently infirm and desirous of resigning, may receive pensions (s. 24).

The subject-matters of the jurisdiction are all personal actions where the debt, demand, or damage claimed is not more than fifty pounds, except libel, slander, seduction, or breach of promise of marriage, ejectment where either the value of the lands or the rent exceeds 50*l.* a year, and actions in which 'the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall come in question' (ss. 56, 59). Also all actions by creditors or legatees, of a deceased person, or for execution of trusts, or for redemption of a mortgage, or for specific performance of an agreement for sale or lease of property, or under the Trustee Relief Acts, or Trustee Acts, or relating to the maintenance of infants, or for the dissolution of partnership, or for relief against fraud or mistake, provided in each of these actions that the subject matter does not exceed in value the sum of 500*l.* (s. 67). Also, by agreement of both parties, all actions assigned to the Queen's Bench Division of the High Court (s. 64).

Actions of Contract in the High Court, where not more than 100*l.* is claimed, may be remitted to a County Court by a judge of the High Court on the application of either party, which such judge is bound to grant unless there is good cause to the contrary (s. 65), and any action of tort in the High Court may in like manner be remitted unless the plaintiff give security for the defendant's costs, or satisfy a judge of the High Court that he has a cause of action fit to be prosecuted in the High Court (s. 66).

The judge is the sole judge of all questions, both of fact and law, except that in cases where the amount claimed exceeds 5*l.* or the action be of an equitable nature, either party may require a trial by a jury of five (ss. 100, 101).

Any party dissatisfied with, and aggrieved by, the determination of the judge in point of law or equity, or upon the admission or rejection of any evidence, may appeal from the same to the High Court, but where the sum claimed does not exceed 20*l.*, only if the judge shall think it 'reasonable and proper that such appeal shall be allowed,' and shall grant leave to appeal (s. 120).

The bringing of unimportant actions in the High Court rather than in a County Court, is discouraged by the provisions (1) that if in an action of contract which could have been commenced in a County Court, the plaintiff recover less than 20*l.*, he shall not be entitled to any costs, and if he recover 20*l.* or more, but less than 50*l.*, he shall not be entitled to more costs than he would have if the action had been brought in a County Court; and (2) that if in an action on tort he recover less than 10*l.* he shall not be entitled to any costs, and if 10*l.* or more, but less than 20*l.*, he shall not be entitled to more costs than he would have if the action had been brought in a County Court, *unless in any such action, whether founded on contract or tort*, a Judge of the High Court certifies that there was sufficient reason for bringing the action in the High Court, or unless the High Court or a Judge at Chambers allow costs, and *provided also*, that if in an action of contract the plaintiff obtain an order under Order XIV. of the Rules of the Supreme Court (see title LEAVE TO DEFEND) empowering him to enter judgment for 20*l.*

or upwards, he shall be entitled to costs according to the Supreme Court scale (s. 116).

The costs of solicitors and fees of counsel were originally limited by s. 91 of 9 & 10 Vict. c. 95, and s. 36 of 19 & 20 Vict. c. 108, to 10*s.* or 15*s.* for the solicitor in proportion to the amount claimed, and 1*l.* 3*s.* 6*d.* for counsel in any case; but this limit was removed by the County Courts (Costs and Salaries) Act, 1882, 45 & 46 Vict. c. 57, s. 2.

Rules of practice are made by five County Court judges, but must be concurred in by the Rule Committee of the Supreme Court, under s. 164 of the Act of 1888, under which section a full set of rules, coming into force on the 1st February, 1889, has been issued. The County Courts have also jurisdiction in very numerous special matters under the statutes relating to them, e.g., in Bankruptcy under the Bankruptcy Act, 1883, and in appeals from referees as to compensation to agricultural tenants for mprovements under the Agricultural Holdings Act, 1883.

See *Pollock and Nicol*, *Pitt Lewis*, or *Heywood on County Courts*, and *Chitty's Statutes*, vol. ii., tit., *Courts* (*County*).'

County Debentures Act, 1873, 36 & 37 Vict. c. 35, repealed and replaced by the Local Loans Act, 1875.

County Electors Act, 1888, 51 Vict. c. 10, provides for the qualification and registration of the electors of the county authorities established by the Local Government Act, 1888 (see LOCAL GOVERNMENT), by extending the qualification for burgesses (see BURGESSES) under ss. 9, 31, and 63 (by which latter section women vote) of the Municipal Corporations Act, 1882, to every part of a county not within a borough, so that every person in such part possessing such qualification becomes entitled to be registered in the parish of the qualifying property. The registration takes place under the Registration Act, 1885, and other Parliamentary and Municipal Registration Acts.

County Palatine [fr. *palatium*, Lat., a court]. There were three of these counties —Chester, Durham, and Lancaster. The two former were such by immemorial custom, the last was created by Edward III. The Bishop of Durham and the Duke of Lancaster had royal power within their respective counties. They could pardon treasons, murders, and felonies; they appointed judges and magistrates; all writs and indictments ran in their names, and offences were said to be done against *their* peace and not *contra pacem domini regis*. The 11 Geo. IV., and 1 Wm. IV. c. 70, abolished the Court of Session of the county palatine of Chester, and subjected the county in all things to the jurisdiction of the superior courts at Westminster. By the Judicature Act, 1873, the jurisdiction of the Court of Common Pleas at Lancaster and of the Court of Pleas at Durham is transferred to the High Court of Justice (s. 16, subs. 9, 10). But the jurisdiction of the Chancery Courts of these counties is retained. By a number of statutes, the practice and proceedings in the Court of Common Pleas and of Chancery, at Lancaster, and at Durham, were respectively regulated and made conformable, in most particulars, to those of the superior courts. See LANCASTER and DURHAM.

The counties palatine are now in the hands of the Crown; the jurisdiction of Durham is vested, as a separate franchise and royalty, in the Crown, by 6 & 7 Wm. IV. c. 19. Lancaster was vested in the Crown by Henry IV., separated indeed from the other possessions of the Crown in order and government, but united in point of inheritance.

County Rate, an imposition levied on the occupiers of lands, and applied to many miscellaneous purposes; among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. See 15 & 16 Vict. c. 81.

County Sessions. They are the general quarter sessions of the peace for each county, and are held four times a year, viz., in the first week (on some day fixed by the magistrates) after the 11th of October, the 28th of December, the 31st of March, and the 24th of June, in every year, provision being made to prevent the April sessions clashing with the spring assizes (1 Wm. IV. c. 70; 4 & 5 Wm. IV. c. 47). The general quarter sessions for the county of Middlesex are remodelled by 7 & 8 Vict. c. 71 (and see 14 & 15 Vict. c. 55, ss. 14—17, and 22 & 23 Vict. c. 4), which requires two sessions to be held monthly—the general quarter sessions being the first of these, held in the months of January, April, July, and October; and the general sessions being the second or adjourned sessions, held in the months of February, May, August, and November; and such other sessions as shall be fixed by the magistrates at the first sessions held in December. Section 11 abolishes the sessions for the city of Westminster. See 14 & 15 Vict. c. 55. See SESSIONS; and consult *Archbold* and *Pritchard on Quarter Sessions.*

Coupons [fr. *couper*, Fr., to cut], interest and dividend certificates; also those parts of a commercial instrument which are to be

cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. A coupon does not require a stamp; it is nothing more than an I.O.U.

Courier [fr. *courir*, Fr., to run], an express messenger of haste.

Courracier, a horse courser.—2 *Inst.* 719.

Court [fr. *curia*, Lat.; *cour*, Fr.; *keort*, Dut.]. 1. The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English Government is spoken of in diplomacy as the Court of St. James's, because the palace of St. James is the official palace.

2. The place where the sovereign administers justice by his judge or a bishop:—

In every court there must be at least three constituent parts: the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judex*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that act, and if any injury appear to have been done, to ascertain, and by its officers to apply, the remedy. Courts are either of *record*, where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and they have power to fine and imprison, and error may be brought upon their judgments; *not of record*, being courts of inferior dignity, and in a less proper sense the King's Courts—and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. Their proceedings are not enrolled or recorded; but their existence as well as the truth of the matters therein contained, may be tried by a jury.

The several species of courts of justice may be thus classed:—

(I.) General jurisdiction, comprehending the Court-baron; the Hundred Court; the County Courts; the Court of Exchequer; the Court of Common Pleas; the Court of Queen's Bench; the Court of Chancery, as a court of first instance; the Probate Court; the Divorce Court, and the Courts of Assize and Nisi Prius: all of which are now parts of the High Court of Justice; the Court of Exchequer Chamber, and the Court of Appeal in Chancery, both now merged in the Court of Appeal; the House of Peers; the Judicial Committee of the Privy Council; and the Court of Bankruptcy.

(II.) Ecclesiastical, military, and maritime, comprehending the Archdeacon's Court; the Consistory Court; the Court of Arches; the Court of Peculiars; the Prerogative Court; and the Court of Admiralty, which is now part of the High Court of Justice. See PUBLIC WORSHIP REGULATION ACT.

(III.) Special jurisdiction, comprehending such ancient courts as the Court of *Piepoudre*, the Forest Courts, the Court of Sewers, the Court of Policies of Assurance (the Court of Marshalsea), and the Palace Court (both abolished), the Court of the Duchy Chamber of Lancaster, the Chancery Courts of the Counties Palatine, the Courts of the Stannaries, the Borough Courts, the Court of Requests, or Courts of Conscience, the University Courts.

The jurisdiction of such of the inferior courts as were not courts of record, and as had not theretofore become obsolete, was practically taken away by the County Courts Act, 1867, s. 28, which provided that no action which could be brought in any County Court should thereafter be brought in any such inferior court. For an elaborate list of these inferior courts see the Appendix to *Trower's Law of Debtor and Creditor*. As to the jurisdiction of the inferior courts since the commencement of the Judicature Acts, see Jud. Act, 1873, ss. 88—91. See now SUPREME COURT OF JUDICATURE.

Court-baron, a court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings.

This Court may be held at any place *within* the manor, giving fifteen days' notice, including three Sundays, of the day when the court will be held; but three or four days' notice have been deemed sufficient. It is frequently held together with the court-leet. It generally assembles but once in the year.

The *freehold* tenants alone are suitors to the court-baron; and it is essential to the existence of the court that there should be two suitors at the least; for since freemen can only be tried by their peers or equals, should there be but one freeman, he can then have no peer or judge, and consequently he must appeal to the court of the lord paramount. The court is held before the freeholders who owe suit to the manor, the steward being rather the registrar than the judge. Neither the lord nor his steward can fine or imprison.

The tenants of a manor may make bye

laws touching their commons and the like, to bind such tenants as assent thereto, unless they be made by prescription, or under an immemorial custom. These laws can never bind strangers. The penalty for the breach of a bye-law is in the nature of a fine, rather than amercement, and is not affeerable, i.e., assisable.

Courts-baron, not being courts of record, were practically abolished as regards their jurisdiction as courts of common law, by the County Court Act, 1867, 30 & 31 Vict. c. 142, s. 28, which provided that no action which could be brought in any County Court, should thenceforth be maintainable in any inferior court not being a court of record.

Courtesy, see CURTESY.

Court-lands, domains or lands kept in the lord's hands to serve his family.

Court-leet. [Coke says, *leet* is a Saxon word, and comes from the verb *gelathian*, or *gelethian* (*g* being added *euphoniæ gratiâ*), i.e., *convenire*, to assemble together, *unde conventus*. 4 Inst. 261. For other opinions as to the derivation of the word, see *Lex Man.* 131; *Ritson on Courts-leet;* and *Scriv. on Copyholds.*] This Court is expressly kept up by s. 40 of the Sheriffs Act, 1887, though for all but formal purposes it has long since fallen into desuetude. It is a court of record appointed to be held once a year within a particular hundred, lordship, or manor, before the steward of the leet, being the King's Court granted by charter to the lords of those hundreds or manors. Its original intent was to view the frank pledges, that is the freemen within the liberty who, according to the institution of Alfred, were all mutually pledges for the good behaviour of each other. It was anciently the custom to summon all the king's subjects, as they respectively grew to years of discretion and strength, to come to the Court-leet and there take the oath of allegiance to the king. The other general business is, to present by jury all crimes whatsoever that happen within their jurisdiction; and not only to present, but also to punish all trivial misdemeanours, as all trivial debts were recoverable in the Court-baron and County Court.—*Steph. Com.*, book vi., ch. xiv. The lord was compellable to hold a court by *mandamus*, and a leet was forfeited by nonuser, and by acts of abuser.

The steward of a Court-leet is an essential officer, and should be indifferent between the lord and the law (see *Powell on Courts-leet*, p. 43), for he is the judge, and presides in the Court wholly in a judicial character; the ministerial acts of the court, such as empannelling the jury, are executed by the bedel or bailiff, sworn to a due performance of his duty. The steward may fine or imprison, and may take a recognizance of the peace: he cannot appoint a deputy, unless he be so empowered in his patent or deed of appointment, or there exist an established custom for it. All fines are recoverable by action of debt or by distress. A fine is imposed by the Court, but an amercement is generally the act of the jury; it must always be affeered in open court by two or more persons appointed by the steward and duly sworn, and is then recoverable by distress or action.

Bye-laws, embodied in the presentments and verdicts of the jury and homage, may be good by custom.

In some manors, the jury of the Court-leet chose the mayor, port-reeve, or other chief municipal officer of the borough or town to which the leet jurisdiction was appended; but the Municipal Corporation Act, 1883, has reorganised all such boroughs as were left untouched by the Municipal Corporations Act of 1835.

All offences cognizable in the leet are inquired of and presented by the suitors of the Court, sworn and charged as a jury for that purpose; and all presentments may be removed, by *certiorari*, into the Queen's Bench, and then traversed. See 2 *Scriv. Cop.* 730.

Court of Chancery (Funds) Act, 1872, 35 & 36 Vict. c. 44, amended by the Judicature Act, 1875, s. 30.

Courts (Colonial) Jurisdiction Act, 1874, 37 & 38 Vict. c. 27.

Courts-martial, courts for the trial of military offences, under the authority of the Crown, and the Army Act, 1881, 44 & 45 Vict. c. 58, s. 47 *et seq.* There are general, district, and regimental Courts-martial. See JUDGE-ADVOCATE. Their jurisdiction does not, however, exempt any officer or soldier from being proceeded against by the ordinary course of law. Consult *Simmons* or *Thring's Crim. Law of the Navy.* As to Naval Courts-martial, see 29 & 30 Vict. c. 109, ss. 58—69.

Cousenage, see COSENAGE.

Cousin [fr. *cousin*, Fr.; *cugino*, It.; *consobrinus*, Lat., whence *cusdrin*, *cusrin*; *sabrino*, Sp.]. A cousin is any collateral relation except brothers and sisters, and their descendants, and the brothers and sisters of any ancestor. The child of A.'s uncle or aunt is called his cousin-german, or first cousin, and the child, grandchild, etc., of such cousin is called his first cousin once, twice, etc., removed. The grandchild of A.'s great-uncle is his second cousin, and the child, grandchild, etc., of such cousin is his second cousin, once, twice, etc., removed, and so on. This distinc-

tion between first cousins once removed and second cousins is well recognized by the law (see *Parker*, in re, 17 *Ch. D.* 262), but in old English 'cousin' often means any collateral relative, and peers have always been and still are styled 'cousins' of the sovereign.

Couthutlaugh [fr. *couth*, Sax., knowing, and *utlaugh*, an outlaw], a person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offence he underwent the same punishment as the outlaw himself.—*Bract.*

Covenable, convenient or suitable.

Covenant [fr. *covenant*, Fr.], an agreement, convention, or promise of two or more parties, *by deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certains facts. He who thus promises is called the covenantor; and he to whom it is made the covenantee. A covenant being part of a deed is subject to the general rules for the construction of such instruments: as, first, to be always taken most strongly against the covenantor, and most in favour of the covenantee; secondly, to be taken according to the intent of the parties; thirdly, to be construed *ut res magis valeat quam pereat*; fourthly, when no time is limited for its performance, that it be performed in a reasonable time. If the covenantor covenants for himself and his heirs, it is then a covenant real, and descends upon the heirs, who are bound to perform it provided they have assets by descent; if he covenant also for his executors and administrators, his personal assets, as well as his real, are likewise pledged for the performance of the covenant, but the executors and administrators are bound by every covenant, without being named, unless it is such a covenant as is to be performed personally by the covenantor, and there has been no breach before his death. Covenants for title are frequently termed real covenants; they are usually, that the vendor is seised in fee, has power to convey, for quiet enjoyment by the purchaser, his heirs and assigns, that the land shall be holden free from incumbrances, and for further assurance. These five covenants are separate and distinct, but the first and second of them may be synonymous, for if a person be seised in fee, he has a power to sell, but the converse of this proposition is not universally true. No particular technical words are requisite, for any words or form of expression which import an agreement or act will suffice. A covenant to do a thing, which upon the face of it appears to be prejudicial to the public interest, or otherwise contrary to law, is absolutely void, as is an impossible covenant, if the impossibility existed at the time of making it.

A covenant is either express or implied—it subsists either in law or in fact. An express covenant, or one in fact, is expressed in words; an implied covenant, or one in law, is that which the law implies, though not expressed in words. Express covenants are taken more strictly than implied. All covenants for the benefit of the estate run with the land, so that he who has the one is subject to the other; they bind those who come in by act of law, as the personal representatives, as well as those who come in by the act of the parties. As to what covenants shall be construed to be precedent or not, it has been laid down that the dependence or independence of covenants must be collected from the sense and meaning of the parties; and that in whatever order covenants may stand in a deed, their precedency must depend on the order of time which the intent of the transaction requires.

Covenants are inherent, that tend to the support of the land or thing granted, or are collateral to it; affirmative, or negative; executed, or that which is already done; executory, or that which is to be done.—*Shep. Touch.* 160; *Bac. Abr. Covenant* (*G*); *Com. Dig.*, *Covenant* (*F*); *Vin. Abr.*, *Covenant* (*O*).

Covenant, Action of, a species of the *ex contractu* actions. It lay where a party claimed damages for breach of a covenant, which is, in fact, a promise under seal. This is no longer a technical expression since the new rules of pleading under the Judicature Act, 1875. See PLEADING.

Covenant to stand seised to uses, a voluntary assurance, operating under the Statute of Uses, and by non-transmutation of possession, i.e., it does not transfer the seisin to another to raise the use in the covenantee, but that seisin remains in the covenantor, he standing seised to the covenantee. It must be by deed, and not by parol, and made by a person seised of lands or tenements, and consequently cannot embrace an equity, right or contingency, though it may be of a reversion or vested remainder, for the reversioner or remainderman is in the seisin. It must be in consideration of marriage or blood, for a covenant to stand seised to the use of a stranger would be void. It must not be for a money consideration, for that would be a bargain and sale. But it is not necessary that the consideration of blood be expressed, for if a person covenant to stand seised to the use of his wife, son, and the like, it will be sufficient, as the

consideration would be apparent. Love and affection to an illegitimate child are not sufficient considerations to raise a use; *à fortiori*, long acquaintance, and familiar intercourse, are not. It is not settled what degree of relationship is necessary to support this assurance; the kindred between second cousins would perhaps be sufficient, if the fact were noticed in the instrument. The consideration of this conveyance is the foundation of it; a conveyance in the form of, and void as a grant, feoffment, or release, may still take effect as a covenant to stand seised.

The only essential difference between a covenant to stand seised to uses and a bargain and sale, setting aside the external formalities required to the validity of the latter, consists in the nature of the consideration; and hence the same deed may operate for the benefit of different parties, both as one and the other; as, if 'A. covenant that in consideration that B. is his son, he shall have the land for life, and after his death, in consideration that C. has given him 100*l.* that he shall have it in fee.' The enrolment gives such solemnity to a bargain and sale that it is said to be an estoppel; but this is not to be understood in the same sense in which an operation by estoppel is attributed to a fine or feoffment, so as to affect property afterwards acquired, but merely that the validity of the deed cannot be denied.—2 *Sand. on Uses*, 96: *Wat. Conv.* 331.

Covenant, Writ of, abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Coventry Act, 22 & 23 Car. II. c. 1, by which it was made a capital felony to disable with intent to disfigure, so called because it was passed in consequence of an assault upon Sir John Coventry. Repealed by 9 Geo. IV. c. 31, s. 1.

Covert-baron, said of a wife who is under the protection of her husband.

Coverture, the condition of a woman during marriage, because she is then under the cover, influence, and protection of her husband. The effect of coverture as to his wife's person is that it belongs of right to her husband, though should he abuse this right, the wife may have security of the peace against him.

As to her property, at common law (*which has been almost revolutionised by the Act of* 1882, *mentioned below*), all freeholds of which she is seised at the time of marriage, or afterwards, vest in the husband and wife during coverture, in right of the wife, and the husband is entitled to the profits, and has the sole control and management, but cannot convey or charge the lands for any longer period than while his own interest continues. She can convey with her husband's concurrence, by any of the ordinary modes of assurance, duly acknowledged as directed by the Fines and Recoveries Act. As to her inheritable realty, the husband becomes, under certain circumstances, tenant by the courtesy, if he outlive his wife, and he and his wife may together make leases of her lands of inheritance, so as to bind her or her heirs after his interest in the property has determined. As to the wife's term of years, and other chattels real, they belong to the husband, and may be taken in execution for his debts, and should he survive her they are absolutely his; but if he make no disposition of them, and she survive him, they then belong to her. The husband at common law becomes generally the absolute owner of his wife's personal chattels (except her *paraphernalia*).

But by the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), it was provided that the earnings of a married woman were to be deemed her own separate property; and by the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, coming into operation on the 1st January, 1883, the disabilities of coverture in respect of property have been almost entirely done away with. See MARRIED WOMEN'S PROPERTY.

The wife, when acting in *autre droit*, as executrix, was always independent of her husband. Marriage settlements and separate provisions modify, of course, his common law rights, according to the particular agreements of the parties. As a general rule, a married woman is, at common law, incapable of entering into any contracts, except for necessaries, and of suing and being sued. Coverture still protects her from criminal prosecution, except in cases of treason, murder, manslaughter, or cases of mere misdemeanour, or crimes committed in her husband's absence.

See further HUSBAND AND WIFE.

Covin [fr. *convenio*, Lat., to agree], a secret conspiracy or agreement between two or more persons to injure or defraud another.

Covinous, fraudulent.

Craft, a guild.

Cranage, a liberty to use a crane for landing goods from vessels at creeks or wharves and to make profit of it; also the money paid and taken for the same.

Crassa negligentia, gross neglect.

Crastino, the morrow after.

Crates, an iron gate before a prison.—1 *Vent.* 304.

Cravare, to impeach.

Craven, or **Cravant,** a word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant,

i.e., yielding. Glanville calls it *infestum et inverecundum verbum*. His condemnation was *amittere liberam legem*, i.e., to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness.

Creamer, a foreign merchant, but generally taken for one who has a stall in a fair or market.—*Blount*.

Creansor, a creditor.—*Old Nat. Br.* 66 38 *Edw. III.* c. 1.

Creast, see CREST.

Credit, a transfer of goods on trust in confidence of future payment.

Creditor [Lat.], one who trusts or gives credit, correlative to debtor. As to the rights of creditors, see NE EXEAT REGNO, SET OFF, FI. FA., CA. SA., ELEGIT, BANKRUPTCY, GARNISHEE, DISTRESS.—A creditor is entitled to take out letters of administration if there be no next of kin or the next of kin will not.

Creditors' bill, a bill in equity filed by one or more creditors, by and on behalf of himself or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due administration of the estate. These bills were allowed upon the principle that as executors and administrators have great power of preference at law, courts of equity ought, according to the maxim that equality is equity, to interpose, upon the application of any creditor by such a bill, to secure a distribution of the assets without preference to any one or more creditors. The usual decree against the executor or administrator was (as it is commonly phrased) *quod computet*, that is to say, it directed the chief clerk to take the accounts between the deceased and all his creditors; and to cause the creditors, upon due public notice, to come before him to prove their debts, at a certain place and within a limited period; and it also directed the chief clerk to take an account of all the personal estate of the deceased in the hands of the executor or administrator, and that the same be applied in payment of the debts and other charges in a due course of administration.—*Story's Eq. Jurisp.* 442. Similar proceedings may now be taken in the Chancery Division of the High Court of Justice under the Judicature Act, 1873, s. 34; but the title of 'Bill' is abolished, a 'Statement of claim' being substituted for it.

Creditrix, a female creditor.

Cremation, the disposal of a dead body by burning instead of by burial. This is not illegal, unless it be done so as to cause a nuisance, or with the intention of preventing a coroner's inquest.—*Reg.* v. *Price*, 12 *Q. B. D.* 247.

Crementum comitatus (*the increase of a county*). The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

Crepare oculum, to put out an eye. An offence punishable among the Saxons by a fine of 50*s.*, the highest fine.—*Turner's Anglo-Saxons*, v. ii., ap. iii., c. ii., p. 515.

Crepusculum [Lat.] the twilight.

Crescente malitiâ crescere debet et pœna. 2 Inst. 479.—(Vice increasing, punishment ought also to increase.)

Crest, in heraldry, signifies the devices set over a coat of arms.

Cretinus, a sudden stream or torrent.

Cretio, the period fixed by a testator within which the heir must have formally declared his intention to accept.—*Civil Law*.

Crier—*Of the Court of Chancery*, abolished by 15 & 16 Vict. c. 87. s. 27. In the Courts of Common Law one of the judge's clerks acted as crier.—15 & 16 *Vict.* c. 73, s. 8. Continued under Jud. Act, 1873, s. 77.

Crime. A crime is the violation of a right, when considered in reference to the evil tendency of such violation, as regards the community at large.—4 *Steph. Com.* Crimes consist either of misdemeanours or felonies. In our law misdemeanour is generally used in contradistinction to felony, and comprehends all indictable offences, which do not amount to felony, as perjury, battery, libels, conspiracies, etc.

It is not very easy in theory, and quite impossible according to the English law, to lay down any single principle by which to distinguish crimes from civil injuries—private from public wrongs. By the English law a distinction exists, but it seems wholly technical; depending sometimes on the situation of the agent; sometimes on the nature or relations of the thing which is the object of the act; sometimes on the manner in which the act is done; sometimes on the consequences of the act, the time of doing it, and other grounds which it would be useless to enumerate, because they can be learned thoroughly only by an acquaintance with the law itself.—4 *Bl. Com.* 7, n. 3, by *Coleridge*. See OFFENCE, and consult *Russell on Crimes*, and *Mellor* v. *Denham*, 5 *Q. B. D.* 467, and other cases decided upon the meaning of 'criminal cause or matter' in s. 47 of the Judicature Act, 1873, which in *Mellor* v. *Denham* was held to include a conviction for breach of a bye-law under the Education Act.

Crimen falsi (*the offence of forgery*).

Crimen falsi dicitur, cum quis illicitus, cui

non fuerit ad hæc data auctoritas, de sigillo, regis rapto vel invento, brevia, cartasve consignaverit. Fleta, 1, c. xxiii.—(The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.)

Crimen furti, the offence of theft.

Crimen incendii, the offence of arson.

Crimen læsæ majestatis, the crimes of injured majesty; treason.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam. 3 Inst. 210.—(The crime of treason exceeds all other crimes in its punishment.)

Crimen raptûs, the offence of rape.

Crimen roberiæ, the offence of robbery.

Criminal, a person indicted for a public offence and found guilty.

Criminal Code. See CODE.

Criminal Conversation, adultery. See ADULTERY. The action of crim. con. is nominally abolished by 20 & 21 Vict. c. 85, s. 59; but the 33rd section gives a husband the right to claim damages from an adulterer, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to that object, and the damages claimed must be assessed by a jury upon the same principles and rules as were formerly applicable to the trial of actions for criminal conversation, and the Court may direct that they be settled for the benefit of the children of the marriage, or as a provision for the wife.

Criminal information, a proceeding in the Queen's Bench Division of the High Court of Justice at the suit of the Queen, without a previous indictment or presentment by a grand jury. Criminal informations are of two sorts: (1) *Ex officio*, which is a formal written suggestion of an offence committed, filed by the Attorney-General, or, in the vacancy of that office, by the Solicitor-General, in the Queen's Bench Division of the High Court, without the intervention of a grand jury. It lies for misdemeanours only, and not for treasons or felonies. The information is filed in the Crown Office without the previous leave of the Court. (2) Information by the Master of the Crown Office, which is filed at the instance of an individual, with the leave of the Court; and usually confined to gross and notorious misdemeanours, riots, batteries, libels, and other immoralities. The procedure on Criminal Information is regulated by Crown Office Rules, 46—50, which provide that the person procuring an information must file a recognizance in 50*l.* to prosecute it, that no application for a criminal information against a justice of the peace as such must be made without notice to him, etc.

Criminal Law. This division of our jurisprudence comprises: (1) The general criminal law administered throughout the kingdom; and (2) The Crown law as administered by the Queen's Bench Division of the High Court of Justice, consisting principally of a sort of *quasi* criminal law—as indictments for nuisances, the repair of roads, bridges, etc., informations, *quo warranto*, mandamus, certiorari, and the judicial decision of questions concerning the poor laws.—Consult *Russell on Crimes.*

Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69, whereby the procuration of women under twenty-one, and illicit though unresisted intercourse with girls between thirteen and sixteen, are made misdemeanours, brothel-keepers are made liable to summary proceedings, and prisoners charged with sexual offences are allowed to give evidence on their own behalf.

Criminal Lunatics Act, 1884, 47 & 48 Vict. c. 64, consolidating and amending the law as to the detention, custody, and discharge of Criminal Lunatics, the principal amendment being that effected by s. 10, which transfers the expense of maintenance of criminal lunatics from their parish or county to the country generally.

Criminal Statutes Consolidation Acts. See 24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100; and see 34 & 35 Vict. c. 32.

Crimp, one who decoys and plunders sailors under cover of harbouring them.

Crocards, a sort of old base money.

Crocia, the *crosier*, or pastoral staff.

Crociarius, the cross-bearer, who went before the prelate.

Croft [A.S., fr. *creaft*, Old Eng., handycraft, or *croit*, Gael., a hump], a little close adjoining to a dwelling-house or homestead, and enclosed for pasture or arable, or any particular use.

Croises, and **Croisado.** See CROYSES.

Croiteir, a crofter, one holding a croft.

Crop, corn, hay, and such other produce as can be cut and stored up. As to setting fire to crops, see 24 & 25 Vict. c. 97, s. 16.

Crore, ten millions.—*Indian.*

Cross's Acts, the Artisans and Labourers Dwellings Improvement Acts of 1875 and 1879. See LABOURERS' DWELLINGS.

Cross-bill, answering to the *reconventio* of the Canon Law, as a mode of defence by cross-examination, was one filed by a defendant in the Court of Chancery against the plaintiff or other defendants in the same suit, either to obtain (1) a necessary discovery of facts in aid of his defence to the original bill;

or (2) full relief to all parties, touching the matters of the original bill. See now COUNTER-CLAIM.

Also a bill of exchange given in consideration of another bill.

Cross-examination, the examination of a witness on one side by the other, generally after examination in chief, but sometimes not; as in the case of an examination on the *voir dire*, which is in the nature of a cross-examination (see VOIR DIRE); and if one party calls a witness, and he is sworn, the other party may cross-examine him, although the party who has called him put no question at all to him. Sometimes cross-examination takes place by leave of the judge after re-examination. See RE-EXAMINATION. And if a witness be called to prove some preliminary and collateral matter only, as the handwriting of a document tendered in evidence, he is a witness in the cause, and may be cross-examined as to any of the issues in the cause.

As to the form of the cross-examination, leading questions are allowed, which is not the case in examination in chief.

The questions must be relevant to the issue (see heads in this title *infra*), but great latitude is allowed, as a question seemingly irrelevant often turns out otherwise.

In the case of a witness proving himself hostile from interest or otherwise, the judge will allow the examination to assume the form of cross-examination.

It is provided by R. S. C., 1883, Ord. XXXVI., Rule 38, that the judge may disallow vexatious and irrelevant questions, and by s. 25 of the C. L. P. Act, 1854, that if a witness deny a conviction for felony, it may be proved.

The following are some of the chief heads of cross-examination :—

I. *To cause the witness to alter or amend his evidence.*

1. (*a*) by showing—
   (1) he has spoken on a misconception of fact: or
   (2) misunderstands the meaning of a word; or
   (3) has given his idea of the effect of a transaction instead of the details.
   (*b*) by inquiring the causes of his belief.
   (*c*) by appealing to his consciousness of a weak memory [this course is taken with very old people].
   (*d*) reminding him that he has spoken otherwise, or that others have; and other methods of showing his evidence ought not to be believed, which will come more fully under II.

2. To modify the evidence given in chief, by causing the witness to speak to supplementary facts to show
   (*a*) the reason for what was done.
   (*b*) the circumstances surrounding it. See *infra* II. B.
   (*c*) the manner in which it was treated at the time.

II. *To discredit the evidence of the witness.*

A. From reasons connected with himself.
   (*a*) that he is of bad character.
      (1) generally.
      (2) in regard to truthfulness.
      (3) in regard to the subject-matter of the issue.
   (*b*) that he is not impartial, as being
      (1) a friend of the other side, through
         (*α*) relationship.
         (*β*) favour.
         (*γ*) corruption.
      (2) a friend of his cause.
         (*α*) to screen his own character.
         (*β*) to conduce to his profit.
      3) an enemy of the cross-examining party.
         (*α*) presumably, having been punished or unjustly injured by him.
         (*β*) apparently, having spoken revengefully of, or previously injured him.
      (4) As under A., (*b*) 2.

N.B. Greater latitude is allowed in examining (on these heads) a party to a cause, than another witness.

B. (to discredit his evidence continued). From reasons arising out of his evidence, by causing him to give further evidence inconsistent—
   (1) with all reason and probability.
      (*α*) absolutely.
      (*β*) under the circumstances [as that he should remember the matter in hand, but nothing else at the same distance of time].
   (2) with the evidence of witnesses of indisputable credit.
   (3) with parts of the case not in dispute.
   (4) with what he himself has previously said,
      (*a*) on a previous occasion.
      (*b*) in the examination in hand.
         (*α*) in chief.
         (*β*) in the prior part of his cross-examination.
   (5) with what a witness on the same side has said on the same subject. Now this will show either that the

variance is a sign that the whole story is a fiction, or that one of the two speaks true and the other false, and that, as it does not appear which speaks true, it is not safe to believe either, or it should be attempted to cast the discredit on the one whose evidence is more important.

(6) with his own conduct in the transaction, or the conduct of witnesses of undisputed credit.

(7) with his demeanour in court, as (if he deposes he was calm under provocation) to irritate him.

III. *To cause him to give evidence to be received as true.*

(A) confirming the evidence of the questioner's witnesses.

(B) contradicting that of the opponent's witnesses.

(C) on a region of facts not previously entered upon, but this topic is more in the nature of examination in chief.

Of these, the First is the most generally useful. The Second (A) may not be resorted to without just grounds of suspicion. The propriety of selecting any of the others must depend upon the view suggested at the moment by the air of the witness and the general complexion of the case. It has been well laid down that the cross-examination of each witness should be made subservient to the general conduct of the case.

Cross-remainders, reciprocal contingencies of succession, which may be implied in a will, but must always be expressed in a deed, and should be expressly limited in a will.

The broad rule is, that wherever realty is devised to several persons in tail as tenants-in-common, and it appears to be the testator's intention that no part should go over until the failure of the issue of all the tenants-in-common, they take cross-remainders in tail amongst themselves. See *Theobald on Wills.*

Crossing checks. It is very usual for the drawers of bankers' checks to write across them the name of the payee's banker, in which case the banker on whom the check is drawn should only pay to that banker; in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words 'and Co.,' leaving it to the payee to add the name of his banker. This serves the purpose of some security in case the check is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon. See Bills of Exchange Act, 1882, 45 & 46 Vict. c. 50, ss. 76—80, repealing and replacing 'Crossed Cheques Act, 1876,' 39 & 40 Vict. c. 81, which Act itself repealed and replaced 19 & 20 Vict. c. 25, and 21 & 22 Vict. c. 79.

Crown [fr. *couronne*, Fr.; *corona*, Lat.], an ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign herself, or the rights, duties, and prerogatives belonging to her. By the Interpretation Act (see that title) s. 30, 'in this Act and in every other Act, *whether passed before or after the commencement of this Act*, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.'

As to costs for and against the Crown, see 18 & 19 Vict. c. 90.

Crown cases reserved. Questions of law which arise at criminal trials (except in the case of demurrers and writs of error) are decided by the 'Court for the Consideration of Crown Cases reserved,' sitting under the authority of 11 & 12 Vict. c. 78, which declares that the Justices of either Bench and the Barons of the Exchequer hear and determine such questions reserved for their consideration by the judge who tried the prisoner. The jurisdiction given by this act may now be exercised by the judges of the High Court of Justice, or five of them at the least. The judgment of such Court is final, and without appeal (Jud. Act, 1873, s. 47).

Crown colony. See COLONY.

Crown debts. It is a prerogative of the Crown to claim priority for its debts before all other creditors, and to recover them by a summary process called an extent, because *thesaurus reginæ est pacis vinculum et bellorum nervi.* See 33 Hen. VIII. c. 39.

Every person having money belonging to the Crown is a crown-debtor. When upon inquisition a person is found to be a crown-debtor by simple contract, the debt immediately becomes a specialty; but a person giving to the Crown a bond on condition is not a bond-debtor before the condition is broken.

The places to be searched to ascertain the existence of any Crown debts created or secured before the 4th of June, 1839, are the Exchequer Office and the Tax Office, among the receiver-general's bonds; since that date, at the Common Pleas Office, pursuant to 2 Vict. c. 11. See 18 Vict. c. 15. After 31st Dec., 1859, the provisions as to re-registry contained in 2 & 3 Vict. c. 11, and 18 & 19 Vict. c. 15, apply to Crown debts.—22 & 23 *Vict.* c. 35, s. 22; and see 23 & 24

Vict. c. 115, s. 1. It is provided by the 28 & 29 Vict. c. 104, that future Crown debts shall not affect lands until writ of execution has been issued and registered (ss. 48—9); and see 28 & 29 Vict. c. 45, and title EXTENT.

Crown-lands. The demesne lands of the Crown, which it is now usual for the Sovereign to surrender at the commencement of his reign for its whole duration, in consideration of the Civil List settled upon him. They are placed under Commissioners, and the revenues go to the Consolidated Fund. See 1 & 2 Vict. c. 2. See LAND REVENUES OF THE CROWN, and the CROWN LANDS ACT, 29 & 30 Vict. c. 62; and the CROWN LANDS ACT, 1873, 36 & 37 Vict. c. 36.

Crown matrimonial. See MATRIMONIAL CROWN.

Crown office, a department formerly belonging to the Court of Queen's Bench. The 6 & 7 Vict. c. 20 abolished the clerks in this Court, and the monopoly of their practice, throwing it open to all persons admitted or admissible to practise as attorneys of the Court of Queen's Bench; it also abolished several ancient offices, and many burthensome fees, and made the office subject to the direct control of the Lord Chief Justice. The Supreme Court of Judicature (Officers) Act, 1879, 42 & 43 Vict. c. 78, amalgamated the Crown Office with the Central Office of the Supreme Court, and transferred to such Central Office the 'Queen's Coroner and Attorney' and the 'Master of the Crown Office.'

The business of this office may be thus stated:—

1st. Original proceedings, which consist of (α) indictments for assaults and batteries, libels, nuisances, perjuries, conspiracies, non-repair of roads, bridges, etc.; (β) informations.

2nd. Proceedings by way of supervision or appeal, exercised by means of (α) certiorari; (β) proceedings in error; (γ) mandamus.

3rd. Collateral proceedings, consisting of (α) articles of the peace; (β) attachments; (γ) habeas corpus.

Crown Office Act, 1877, 40 & 41 Vict. c. 41, provides for the authentication, etc., of documents issued from the office of the Crown in Chancery.

Crown Office Rules, 1886, a large body of Rules, 308 in number, with 204 Forms and Tables of Fees, issued by the Rule Committee of the Supreme Court, and regulating the whole practice and procedure of the Crown Side of the Queen's Bench Division of the High Court in Certiorari, Criminal Information, Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and other matters.

Crown Paper. A list of proceedings pending on the Crown Side of the Queen's Bench Division of the High Court.

Crown Private Estates Acts, 25 & 26 Vict. c. 37; explained and amended by 36 & 37 Vict. c. 61.

Crown Side of the Queen's Bench Division of the High Court, that side of the Division on which the litigious business of the Crown Office (see CROWN OFFICE) is conducted before the same judges of the Division as those by whom actions between subject and subject are tried, but by a separate staff of officers.

Crown Solicitor. In Ireland there are officers called Crown solicitors attached to each circuit, whose duty it is to get up every case for the Crown in criminal prosecutions. They are paid by salaries. In Scotland the still better plan exists of a Crown prosecutor (called the procurator-fiscal, and being a subordinate of the Lord-Advocate) in every county, who prepares every criminal prosecution. As to England, see PUBLIC PROSECUTOR.

Crown suits—prosecutions in, see 28 & 29 Vict. c. 105; costs in, see 18 & 19 Vict. c. 20.

Croy, marsh land.—*Blount.*

Croyses, pilgrims, because they wore the sign of the cross upon their garments.—*Bract.* l. 5, pt. 2, c. ii.

Cruelty. Such conduct on the part of a husband (or wife, see *Forth* v. *Forth*, 36 *L. J. P. & M.* 122) as entitles the other party to a judicial separation by reason of danger to life or health. See 20 & 21 Vict. c. 85, s. 16, and 41 Vict. c. 19, by which a Court of Summary Jurisdiction may order that a wife whose husband has been convicted of an aggravated assault upon her shall be no longer bound to cohabit with him.

Cruelty to Animals Prevention Acts, 12 & 13 Vict. c. 92; 17 & 18 Vict. c. 60; 24 & 25 Vict. c. 97, ss. 40, 41. See ANIMALS.

Crustum, a purple garment mixed with many colours.

Cry de pais, or **Cri de pais,** hue and cry.

Cryer, an officer of a court, whose duty it it is to make proclamation. See CRIER.

Crypta [Ital., fr. κρύπτω, Gk., to hide, being first used by the early Christians for the performance of religious services in safety], a chapel or oratory underground, or under a church or cathedral.—*Du Cange.*

Cshatriya, Kshatriya, Chetterie, Khetery, a man of second or military caste.—*Indian.*

Cucking-stool. A chair on which females for certain offences were fastened and ducked in a pond. 'The chair was sometimes in the form of a close-stool, which contributed to increase the degradation.'—*Halliwell.* It was also called *goging-stool. Goughstole,* A.-Sax.,

a close-stool.—*Wedgw.* 'A common scold, *communis rixatrix* (for our Law-Latin confines it to the feminine gender), is a public nuisance to her neighbourhood; for which offence she may be indicted, and, if convicted, shall be sentenced to be placed on a certain engine of correction, called the trebucket, castigatory or cucking-stool.'—4 *Bl. Com.* 168.

Cude, a chrysom or face-cloth for a child baptised.

Cui ante divortium (*to whom before divorce*) A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee simple or in tail, or for life, from him to whom her husband alienated them during the marriage, when she could not gainsay it.—*Reg. Orig.* 233.

Cui bono. To whose advantage.

Cui in vitâ (*to whom in life*). A writ of entry for a widow against him to whom her husband aliened her lands or tenements in his lifetime; which must contain in it, that during his life she could not withstand it.—*Reg. Orig.* 232; *F. N. B.* 193.

Cuilibet in arte suâ perito est credendum. Co. Litt. 125.—(Every one who is skilled in his own art is to be believed.) See EXPERT.

Cujus est commodum ejus debet esse incommodum.—(Whose is the advantage, his also should be the disadvantage.)

Cujus est dare ejus est disponere.—(Whose it is to give, his it is to dispose.)

Cujus est divisio alterius est electio. Co. Litt. 166.—(When one has the division, the other has the choice.)

Cujus est instituere ejus est abrogare.—(He that institutes may also abrogate.)

Cujus est solum ejus est úsque ad cœlum et ad inferos, or more succinctly, *Cujus est solum ejus est altum.* Co. Litt. 4.—(Whose is the soil, his it is even to heaven and to the middle of the earth.)

Cujus juris (i.e., *jurisdictionis*) *est principale, ejusdem juris erit accessorium.* 2 Inst. 493.—(An accessory matter is subject to the same jurisdiction as its principal.)

Culagium, the laying up of a ship in a dock for repair.

Culpa, an act of neglect, causing damage, but not implying an intent to injure, of which the Roman jurists recognized two; (1) *Culpa lata, culpa latior, magna culpa*, gross neglect treated very much like fraud; *culpa magna dolus est, dolo proxima.* (2) *Culpa*, without any epithet, or *omnis culpa, culpa levis, levior;* or *levissima*, slight neglect.—*Cum. Civ. Law.* 279; *Sand. Just.*

Culpâ caret, qui scit, sed prohibere non potest, D. 50, 17, 50.—(He is free from fault, who knows but cannot prevent.)

Culpa est immiscere rei ad se non pertinenti. 2 Inst. 208.—(It is a fault for any one to meddle in a matter not pertaining to him.)

Culpa lata dolo æquiparatur.—(Gross negligence is held equivalent to intentional wrong.)

Culpa tenet suos auctores.—(A fault binds its own authors.)

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est. Jur. Civ.—(Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offence.)

Culprit [(thus derived by Donaldson), the clerk asks the prisoner, 'Are you guilty, or not guilty?' Prisoner, 'Not guilty.' Clerk, '*Qu'il paroit:* (may it prove so), how will you be tried?' Prisoner, 'By God and my country.' These words being hurried over came to sound, 'Culprit, how will you be tried?' The ordinary derivation is from *culpa*], one who is indicted for a criminal offence; popularly mistaken for the legal denomination of a criminal.

Cultura, a parcel of arable land.—*Blount.*

Culvertage [fr. *culus* and *verto*, Lat., to turn tail], base slavery, the confiscation of an estate.—*Mat. Par.* 1212.

Culward and **Culverd**, a coward.

Cum adsunt testimonia rerum quid opus est verbis? 2 Buls. 53.—(Where the testimony of facts is present, what need is there of words?)

Cum confitente sponte mitius est agendum. 4 Inst. 66.—(One confessing willingly should be dealt with more leniently.)

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est. Co. Litt. 112.—(Where two things repugnant to each other are found in a will, the last prevails.)

Cum grano salis (with a grain of salt), with allowance for exaggeration.

Cum in testamento ambigue aut etiam perperam scriptum est benigne interpretari et secundum id quod credibile est cogitatum credendum est. D. 34, 5, 24.—(Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally and in accordance with the testator's probable meaning.)

Cum par delictum est duorum semper oneratur petitor et melior habetur possessoris causa. D. 50, 17, 154.—(When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.—*Broom's Max.*)

Cum privilegio, the expression of the monopoly of Oxford, Cambridge, and the Royal Printers to publish the Bible.

Cum testamento annexo [Lat.], (*with the will annexed*). See ADMINISTRATOR.

Cumulative legacies, legacies so called to distinguish them from legacies which are merely repeated. In the construction of

testamentary instruments, the question often arises whether, where a testator has twice bequeathed a legacy to the same person, the legatee is entitled to both, or only to one of them; in other words, whether the second legacy must be considered as a mere repetition of the first, or as cumulative, i.e., additional. In determining this question, the intention of the testator, if it appears on the face of the instrument, prevails; but if it does not so appear the following rules have been laid down:—

(I.) If the same specific thing be bequeathed twice to a legatee, whether by the same instrument or not, he is entitled to one legacy only.

(II.) If the legacies be not of a specific thing, but of quantity, e.g., a sum of money:—

(1) If they are bequeathed by the same instrument, and are of equal amount, the second legacy is not cumulative, but the legatee is entitled to one legacy only.

(2) If they are bequeathed by the same instrument, but are of unequal amount, the second legacy is cumulative.

(3) If they are bequeathed by different instruments, whether they are equal or unequal in amount, the second legacy is cumulative. See 2 *Williams on Executors*, 7th ed., 1289.

Cumulative remedy, a second mode of procedure in addition to one already available, opposed to alternative remedy.

Cuna cervisiæ, a tub of ale.—*Domesday*.

Cuneus, a mint or place to coin money; from this word coin is derived.

Cuntey-cuntey, a kind of trial as appears from *Bracton, lib.* 4, *tract* 3, *ca.* 18 and *tract* 4, *ca.* 2. where it seems to mean, one by the ordinary jury.

Curagulos, one who takes care of a thing.

Curate [fr. *curator*, Lat.], one who has the cure of souls, the lowest degree in the church, being an officiating temporary minister, regularly employed by the spiritual rector or vicar, either to serve in his absence or as his assistant. All curates serve under a license from the bishop of the diocese, revocable at his discretion, with an appeal against the revocation of the license to the archbishop only (1 & 2 Vict. c. 106, s. 98; *Poole* v. *Bishop of London*, 7 *Jur. N. S.* 347); and the law on the other hand has made several provisions for their proper maintenance.—1 & 2 *Vict.* c. 106, ss. 75—103; *Pluralities Act*, 1884, 48 & 49 Vict. c. 54, ss. 8, 10.

Curator, a protector of property. His duty was to see that the person under his care did not waste his goods.—*Civil Law, Sand. Just.*, 5th ed., xl. 71, 83.

Curatores viarum, surveyors of the highways.

Curatus non habet titulum. 3 Buls. 310.—(A curate has not a title.)

Curfeu, Curfew [fr. *couvrir*, to cover, and *feu*, Fr., fire], a bell which rang at eight o'clock in the evening, in the time of William the Conqueror, whereupon every one was obliged by law to put out his fire and light. The law was abolished by Henry I. in 1100. It was called in the Law-Latin of the middle ages, *ignitegium* or *pyritegium*.

Curia, a court of justice. Also the class from which in the Roman provincial towns the magistrates were eligible.

Curia advisari vult (*the court desires to consider*), a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in our reports thus, *cur. adv. vult*, or *c. a. v.*

Curia Cancellariæ officina justitiæ. 2 Inst. 552.—(The Court of Chancery is the workshop of justice.)

Curia claudenda, an obsolete writ to compel another to make a fence or wall, which he was bound to make between his land and the plaintiff's.—*Reg. Orig.* 155.

Curia cursûs aquæ, a court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend Bridge, etc. —2 *Geo. II.* c. 26.

Curia domini, the lord's house, hall, or court, where all the tenants meet at the time of keeping courts.—*Cowel*.

Curia palatii, the Palace Court. It was abolished by 12 & 13 Vict. c. 101.

Curia Parliamenti suis propriis legibus substitut. 4 Inst. 50. — (The Court of Parliament is governed by its own peculiar laws.)

Curia penticiarum, a court held by the sheriff of Chester, in a place there called the *Pendice* or *Pentice*; probably it was so called from being originally held under a pent-house or open shed covered with boards.—*Blount*.

Curia Regis. See Aula Regis.

Curiality, the privileges, prerogatives, or, perhaps, retinue, of a court.—*Bacon*.

Curiæ Christianitatis, Courts of Christianity; ecclesiastical courts.

Curiosa et captiosa interpretatio in lege reprobatur. 1 Buls. 6.—(A nice and captious construction is reprobated in law.)

Curnock, a measure containing four bushels, or half a quarter.

Currency, coin; bank notes, or other paper money issued by authority, and which are continually passing as and for coin. See 56 Geo. III. c. 68; 6 Geo. IV. c. 79; 2 & 3 Wm. IV. c. 34, s. 1; 12 & 13 Vict. c. 41,

s. 1; and 33 Vict. c. 10. See COIN and TENDER.

Curriculum, the course of a year; 2, the set of studies for a particular period, appointed by an university.

Currit tempus contra desides et sui juris contemptores.—(Time runs against the slothful, and those who slight their own rights.)

Cursing. Profane swearing or cursing is punishable by fine. See 19 Geo. II. c. 21, and SWEARING.

Cursitor Baron of the Exchequer, an officer whose business it was to pass the accounts of the sheriffs, etc. See Manning's Exchequer Practice, p. 322 and note. The office was abolished by 19 & 20 Vict. c. 86, 'the duties thereof having for the most part ceased.'

Cursitors [fr. *clerici de cursu*, Lat.], clerks of the Court of Chancery, who made out original writs, and were called clerks of course.—18 *Edw. III.* st. 5. Their office was abolished by 5 & 6 Wm. IV. c. 82, ss. 10, 11, and 12, and their duties were transferred to the Petty Bag Office. See PETTY BAG OFFICE.

Cursones terræ, ridges of land.

Cursor, an inferior officer of the Papal court.

Cursus curiæ est lex curiæ. 3 Buls. 53.—(The practice of the court is the law of the court.)

Curtesy of England [*jus curialitatis Angliæ*, Lat.], an estate which by favour of the law of England arises by act of law, and is that interest which a husband has for his life in his wife's fee-simple or fee-tail estates, general or special, after her death.

There are four circumstances necessary to the existence of this estate (which appears to be unaffected by the Married Women's Property Act, 1882):—

(1) A canonical or legal marriage.

(2) Seisin of the wife; as to corporeal hereditaments, it must be a seisin in deed, either actual or virtual (*Co. Litt.* 29 *a*, n. 3; 8 *Co.* 96 *a*), but as to incorporeal hereditaments, a seisin in law is sufficient, where a seisin in deed is impossible.

(3) Birth of issue, alive and during the mother's existence (*Paine's case*, 8 *Co.* 34). It is immaterial whether the issue live or die, or whether it be born before or after the wife's seisin. If a woman inheritable marries, has issue, her husband dies, and she takes another husband, and has issue, which dies, and then the wife dies, the second husband shall be tenant by the curtesy, though the issue by the first husband be living.

(4) Death of the wife. The husband's title to the curtesy is initiated at the birth of issue, and consummated at the death of his wife.

It is to be observed that by the custom of gavelkind, a husband may be tenant by the curtesy, without having had any issue by his wife. This curtesy is only of a moiety of the wife's lands, and ceases if the husband marry again.

All persons capable of taking freehold estates may be tenants by the curtesy; but aliens cannot except under 33 & 34 Vict. c. 14, s. 2, nor felons (*Co. Litt.* 30 *b*, n. 7), except under 33 & 34 Vict. c. 23. A condition to restrain the husband of a feme-donee in tail from curtesy is repugnant and void.—*Co. Litt.* 224 *a*.

An estate by the curtesy, in respect of the estate tail, or of any prior estate created by the settlement, as well as a resulting use or trust to or for the settlor, is to be deemed a prior estate under the settlement within the contemplation of the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74, s. 22) appointing a protector; the husband would therefore be the protector of the settlement. See *Bisset on Life Estates*, c. iii.

Some English writers (*Mirror*, c. i. s. 3) ascribe the law of *curtesy* to Henry I.; but Nathaniel Bacon (*Government*, 4to, 1647, p. 105) calls it a law of counter-tenure to that of dower, and yet supposes it as ancient as the time of the Saxons, and that it was therefore rather restored by Henry I., than introduced by him. But there is no trace of this curtesy among the laws of the Saxons, nor among those we have of Henry I.—1 *Reeve* 298; *Cham. on Est.* c. iii. p. 92.

Curteyn, the name of King Edward the Confessor's sword; it is said that the point of it was broken as an emblem of mercy.—*Mat. Par. in Hen. III.*

Curtilage [fr. *coar*, Fr., court; and *leagh*, Sax., place], a court-yard, backside, or piece of ground lying near and belonging to a dwelling-house; the limit of the premises in which housebreaking can be committed. See 24 & 25 Vict. c. 96, s. 53.

Curtiles terræ, court lands.—*Spel. on Feuds.*

Cussore, a term used in Hindostan for the discount of allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted.—*Encyc. Lond.*

Custalorum, a ridiculous confusion of *custos rotulorum.*—*Shakespeare.*

Custantia, costs.

Custode admittendo, Custode amovendo, writs for the admitting and removing of guardians.

Custodes Libertatis Angliæ auctoritate Parliamenti, the style in which writs and all judicial processes were made out during the great revolution from the execution of

King Charles I. till Oliver Cromwell was declared Protector.—12 *Car. II.* c. 3.

Custodia legis. Custody of the law. See IN CUSTODIA LEGIS.

Custodiam lease, a grant from the Crown under the Exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof.

Custody of Infants. See INFANTS.

Custom [fr. *costume*, It.; *coustume, coutume*, Fr.; *costumbre*, Sp.; *consuetudo*, Lat.], an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is common law; if particular, it is then properly custom. The requisites to make a particular custom good are these: (1) It must have been used so long that the memory of man runs not to the contrary; (2) it must have been continued; and (3) peaceable; also (4) reasonable; and (5) certain; (6) compulsory, and not left to the option of every person, whether he will use it or not; and (7) consistent with other customs, for one custom cannot be set up in opposition to another. Customs are of different kinds, as customs of merchants, customs of a certain district, customs of a particular manor, etc. If there be an invariable certain and general usage or custom of any particular trade or place, the law will imply that a party contracting upon a matter to which the same has reference, intended to import such usage or custom into his contract. See CUSTOM OF THE COUNTRY, *infra*.

Custom-house, the house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc. The principal British custom-house is in London, but there are custom-houses subordinate to it in all the considerable seaports.

Custom-house agents were persons authorized by the Commissioners of Customs to act for parties at their option in the entry or clearance of ships, and the transaction of general business. They gave a bond to the commissioners in the sum of 1000*l.* conditioned for their good conduct, and for the purpose of enabling restitution to be made of any loss accruing by their negligence or misconduct. They have been abolished for many years.

Custom of the Country, in agriculture, that usage governing the relations of agricultural landlords and tenants, which is considered to be incorporated in every farming lease or agreement unless it be expressly excluded therefrom. The most important kinds of custom are those by which the tenant on quitting his holding has a right to be compensated for his expediture on those acts of husbandry of which he cannot obtain the benefit during the tenancy itself, as where the tenant goes out at Lady-Day, and is either paid in money for the seed and labour which he has expended upon the crop to be reaped in the autumn, or has a right to re-enter to till and gather his 'away-going crop.' See AWAY-GOING CROP.

In many parts of England, the custom of the country entitles the tenant to be paid for artificial manures, and in some few, preeminently in Lincolnshire, for drainage, and buildings; but customs are most variable and difficult to ascertain, and from a comparison of returns procured in 1848 by a Select Committee of the House of Commons with those procured in 1875 by the Central Chamber of Agriculture, it appears that they are continually changing. As a matter of convenience, the compensation money is generally, almost universally, paid by the incoming to the outgoing tenant, but it is clear law (1) that the landlord himself is liable to the outgoing tenant; and (2) that a custom for the outgoing tenant to look to the incoming tenant, to the exclusion of the landlord's liability, is bad. If the tenant is entitled to compensation under the Agricultural Holdings Act, 1883 (see that title), he cannot claim compensation for the same improvement under the custom, but his right to compensation for all other improvements is expressly preserved, and as that act has no application to ordinary acts of husbandry, such as sowing and tilling and ordinary manuring, customs of the country, except so far as specially dealt with by agreement, have still a wide effect. But it is usual and desirable so to frame farming agreements as to specify the acts of husbandry for which the tenant is to be compensated, and to bar his rights under any custom.—See *Woodf. L. & T.* 14th ed., ch. xx. s. 4; *Bund on Compensation; Cooke on Agricultural Tenancies.*

Custom of Merchants [*lex mercatoria*, Lat.] See COMMERCE, and also CUSTOM.

Customary Court-baron, a court which should be kept within the manor for which it is held. It may be held anywhere within the manor, at the pleasure of the person holding it, unless some ancient custom require it to be held in a certain place.

The court-baron was to be held from three weeks to three weeks, or, as some think, as often as the lord chose. And it should seem clear, that the lord may hold a customary court as frequently as he pleases, and compel the attendance of his tenants who hold by villein or base services.—2 *Wot. Cop.* c. i. p. 9.

It is to be observed, that although there should be no freeholders of the manor, by which the court-baron or freeholders' court is lost, yet still there may be a customary court; for as these two courts are distinct (though frequently held at the same time, the same roll serving to record the proceedings of both), the want of freeholders does not preclude the lord from holding a customary court for his copyholders.—1 *Cruise's Dig.*, tit. x., c. i., s. 19. See COURT-BARON.

Customary freeholds, or, as they are also denominated, PRIVILEGED COPYHOLDS, or copyholders of frank tenure, were known in ancient times as estates in privileged villenage or villein socage, and are estates held by custom, but not at the lord's will, in which they differ from copyholds: yet now the will of the lord in copyhold is, as we have seen, reduced to a mere fiction. These lands are of such singular nature that when they are compared with mere copyholds, they may be called freeholds, and when compared with absolute freeholds, they may be denominated copyholds. While the *freehold interest* or *estate* rests with the tenant, the *freehold tenure* is in the lord. (Mr. Serjeant Scriven dissents from this proposition in his work on *Copyholds*, Vol. II., p. 572, *et seq*). They are usually transferred, by surrender into the hands of the lord and admittance of the new tenant. Their customs, incidents, and services are similar to those already noticed as relating to copyholds properly so called.

Mr. Cruise divides customary freeholds into two kinds: (1) Those of which the freehold is in the lord, more properly called *free* copyholds; and (2) those of which the freehold is in the tenant, strictly called *customary* freeholds. The former pass by surrender and admittance, the latter by a conveyance which passes from the grantor-tenant his freehold, followed by an admittance (or as the custom is, in some manors, by surrender and admittance), which makes the change of tenancy. —*Cruise's Dig.*, tit. x., c. i., s. 9.

Customs, duties charged upon commodities on their importation into, or exportation out of, a country. They seem to have existed in England before the Conquest, but the King's claim to them was first established by 3 Edw. I. These duties were, at first, principally laid on wool, woolfels (sheep skins), and leather, when exported. They were also extraordinary duties paid by aliens, which were denominated *parva costuma*, to distinguish them from the former, or *magna costuma*. The duties of tonnage and poundage, of which mention is so frequently made in English history, were custom duties; the first being made on wine by the ton, and the latter being an *ad volorem* duty of so much a pound on all other merchandise.—3 *Steph. Com.*, 6th ed., 597. When these duties were granted to the Crown, they were denominated *subsidies*, and as the duty of poundage had continued for a lengthened period at the rate of 1*s.* a pound, or five per cent., a subsidy came, in the language of the customs, to denote an *ad valorem* duty of five per cent. The *new subsidy* granted in the reign of Wm. III. was an addition of five per cent. to the duties on most imported commodities. The various custom duties were collected for the first time in a book of rates published in the reign of Charles II.: a new book of rates being again published in the reign of Geo. I. But exclusive of the duties entered in these two books, many more had been imposed at different times; so that the accumulation of the duties, and the complicated regulations to which they gave rise, were productive of the greatest embarrassment. The Customs Consolidation Act, 27 Geo. III. c. 13, introduced by Mr. Pitt, in 1787, did much to remedy these, among other inconveniences. The method adopted was, to abolish the existing duties on all articles, and to substitute in their stead one single duty on each article, equivalent to the aggregate of the various duties by which it had previously been loaded. The resolutions on which the act was founded amounted to about 3000. A more simple and uniform system was at the same time introduced into the business of the custom-house. These alterations were productive of the very best effects, and several similar consolidations have since been effected, particularly in 1853, when the 16 & 17 Vict. c. 107 consolidated the several acts then in force for the management and regulation of customs, the prevention of smuggling, the encouragement of British shipping and navigation, the warehousing of goods, the granting of drawbacks and allowances of customs, the regulation of the trade of the British possessions abroad and of the Isle of Man; and lastly, in 1876, by the Customs Consolidation Act, 1876, 39 & 40 Vict. c. 36, the Customs Tariff Act, 1876, 39 & 40 Vict. c. 35, consolidating the duties in the same year. The 'Customs and Inland Revenue Acts' of subsequent years will be found to contain divers small amendments.

The principal articles now (1891) subject to custom duties are beer, wine, spirits, tea, coffee, tobacco, and dried fruits.

Customs Inland Bonding Act, 1860.—23 & 24 *Vict.* c. 36.

Custos brevium (*the keeper of the writs*), a principal clerk belonging to the Courts of Queen's Bench and Common Pleas, whose

office it was to keep the writs returnable into those courts. Abolished by 1 Wm. IV. c. 5.

Custos morum, the guardian of morals. The Court of Queen's Bench has been so styled.—4 *Steph. Com.*, 7th ed., 377.

Custos placitorum coronæ (*the keeper of the pleas of the crown*). The *custos rotulorum.*

Custos rotulorum (*the keeper of the rolls* or *records of the county*). A principal justice of the peace within the county, by whom the clerk of the peace is appointed.—*Harding* v. *Pollock*, 6 *Bing.* 25.

Custos spiritualium, he that exercises the spiritual jurisdiction of a diocese, during the vacancy of any see, which, by the canon law, belongs to the dean and chapter, but at present, in England, to the archbishop of the province by prescription.—*Encyc. Lond.*

Custos statum hæredis in custodiâ existentis meliorem non deteriorem facere potest. 7 Co. 7.—(A guardian can make the estate of an existing heir under his guardianship better, not worse.)

Custos temporalium, the person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.—*Encyc. Lond.*

Custuma antiqua sive magna, the old export duties on wool, sheepskins or woolfels, and leather.

Custuma parva et nova, the alien's duty on imported and exported commodities.

Cutcherry, corrupted from *Kachari*, 'A court, a hall, an office, the place where any public business is transacted.'—*Indian.*

Cuthred, a knowing or skilful counsellor.

Cutpurse, one who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom.

Cutter of the tallies, an officer in the Exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

Cutwal, Katwal, the chief officer of police or superintendent of markets in a large town or city in India.

Cycle [fr. κύκλος, Gk.], a measure of time; a space in which the same revolutions begin again; a periodical space of time.—*Encyc. Lond.*

Cygnets belong equally to the owners of the cock and hen.—7 *Rep.* 17.

Cyne-bot, or **Cyne-gild**, the portion belonging to the nation of the mulct for slaying the king, the other portion or 'wêr' being due to his family.—*Blount.*

Cyning [fr. *cyn.*, Sax.; *gens. natio*, Lat.], a king; a son or child of the people. It is manifestly a patronymic, like *Æscing*, son of Æsc; *Uffing*, son of Uffa; *Œlling*, son of Œlle; *Cerdicing*, son of Cerdic; *Iding*, son of Ida; *Cryding*, son of Cryda; *Ætheling*, son of the Æthel, or noble.—*Anc. Inst. Eng.*

Cy-près (*near to it*). The principle of this doctrine is, that where a testator has two objects, one primary or general, and the other secondary or particular, which are incompatible, the particular must be sacrificed in order that effect may be given to the general object, *as near as may be* to the testator's intention, according to law. Thus, if a testator manifest a general intention that a particular unborn devisee and his issue should take certain property, but in consequence of the interests of the issue being limited by purchase, the particular mode adopted by the testator of carrying into effect his primary intent be contrary to law, the Courts have, in support of the testator's general intention to provide for the issue of the devisee, sometimes held that the issue shall take derivatively through the ancestors, by vesting an estate tail in him, which is conformable to the rules of law.

It is also applied to charitable bequests, and was formerly pushed to a most extravagant length. But this sensible distinction now prevails, that the Court will not decree the execution of a charitable trust in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed. In that case another mode will be adopted consistent with the general intention, so as to execute it, though not in mode, yet in substance. If the mode should become by subsequent circumstances impossible, the general rule is not to be defeated, if it can in any other way be obtained. Where there are no objects remaining to take the benefit of a charitable corporation, the Court will dispose of its revenues by a new scheme upon the principles of the original charities, *cy-près.*

There is also a modification of the strictness of the common law, as to conditions precedent in regard to personal legacies, which is at once rational and convenient, and tends to carry into effect the intention of the testator. It is, that where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any default of the party, it is sufficient that it is complied with as nearly as it practically can be, i.e., *cy-près.* This modification is derived from the civil law, and stands upon the presumption that the donor could not have intended to require impossibilities, but only a substantial compliance with his directions, as far as they should admit of being

fairly carried into execution. It is upon this ground that courts of equity constantly hold in cases of personal legacies, that a substantial compliance with the condition satisfies it, although not literally fulfilled. Thus, if a legacy upon a condition precedent require the consent of three persons to a marriage, and one or more of them die, the consent of the survivor or survivors would be deemed a sufficient compliance with the condition. And *à fortiori*, this doctrine would be applied to conditions subsequent.—*Sugd. Powers*, 549; 1 *Story's Eq. Jur.*, 235, and Vol. II., 386, 390.

Cyroe, a church.

Cyricbryce, a breaking into a church.

Cyrographum, an Anglo-Saxon charter, this word being written in capital letters at the top or bottom of the charter and cut through by a knife.—1 *Reeve*, 10; *Co. Litt.* 229.

D.

Da tua dum tua sunt, post mortem tunc tua non sunt. 3 Buls. 18.—(Give the things which are yours whilst they are yours; after death they are not yours.)

Dagus, or **Dais** [fr. *dais* or *daiz*, Fr., a canopy or cloth of state], the raised floor at the upper end of a hall.

Daker, or **Diker**, ten hides.—*Blount.*

Dalus, Dailus, Dailia, a certain measure of land: such narrow slips of pasture as are left between the ploughed furrows in arable land. —*Cowel.*

Dam [fr. *dam*, Dan.; *dammer*, Icel.], a boundary or confinement; a mole.

Damage [fr. *damnum agere*, Lat.; *dommage*, Fr.], a loss or injury by the fault of another, e.g., by an unlawful act or omission.

Damages. The compensation, as fixed by the jury, or judge if the case be tried without a jury, payable to a successful plaintiff. See also INTEREST, and MEASURE OF DAMAGES.

Double and treble damages are in some cases given by particular statutes, but at common law the damages are always single. Damages may be limited, increased, or reduced, according to circumstances.—1 *Reeve*, 14; 2 *Turner's Anglo-Sax.* v. ii. app. iii. c. ii.; *Sedgwick* or *Mayne on Damages.*

Courts of Equity long laboured under the infirmity of not being able to award damages by way of compensation for a fraud, or for the non-performance of a contract relating to the sale and purchase of realty. This was amended by 21 & 22 Vict. c. 27, 'Cairns' Act,' which provided that 'In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, *or* against the commission or continuance of any wrongful act, *or* for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same Court, if it shall think fit, to award damages to the party injured, *either* in addition to, *or* in substitution for such injunction or specific performance, and such damages may be assessed in such a manner as the Court shall direct' (s. 2).

This Act, in substance re-enacted by s. 24 of the Judicature Act, 1873, is expressly repealed by the Statute Law Revision and Civil Procedure Act, 1883.

The Judicature Acts allow matters to be set up by a defendant by way of counterclaim, which must formerly have been the subject of a separate action; and, therefore, a defendant may in effect recover damages. See R. S. C. 1883, Ord. XXI., Rule 17, and COUNTER-CLAIM.

Damages ultra, additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

Damage-cleer [fr. *damna clericorum*, Lat.], a fee assessed of the tenth part in the Common Pleas, and the twentieth part in the Queen's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks, for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-cleer, or anything in lieu thereof, he forfeited treble the value.—17 *Car. II.* c. 6.

Damage-feasant, or **faisant** (*doing damage*). If a stranger's beasts are found on another person's land without his leave or license, and without the fault of the possessor of the close (which may happen from his not repairing his fences), and there doing damage by feeding, or otherwise, to the grass, corn, wood, etc., the person damaged may distrain and impound them, as well by night as in the day, lest the beasts escape before taken; but they cannot be sold for the damage done. By 6 & 7 Vict. c. 30, any person releasing, or attempting to release, cattle lawfully seized by way of such distress, from the pound is, on conviction before two justices of the peace, liable to a penalty not exceeding 5*l.* By 12

& 13 Vict. c. 92, repealing 5 & 6 Vict. c. 59, persons impounding cattle are bound, under a penalty of 40*s.*, to supply them with food and water.

Dame [fr. *dame*, Fr.; *dama*, Sp.], the legal designation of the wife of a knight or baronet.

Damnification, that which causes damage or loss.

Damnify, to endamage, to injure, to cause loss to any person.

Damnosa hæreditas, a disadvantageous, or unprofitable inheritance.

Damnum absque injuria (*a loss without a wrongful act*). This is not actionable. Thus, if I have a mill, and a neighbour builds another mill upon his own land, *per quod*, the profit of my mill is diminished, yet no action lies against him, for every one may lawfully erect a mill upon his own ground. But if I have a mill by prescription on my own land, and another erects a new mill, which draws away some portion of the stream from mine, so as to diminish its former power, an action of trespass on the case will lie against him.

Damnum fatale, fatal damage, for which bailees are not liable. Among fatal damages were included by the civilians losses by shipwreck, by lightning, or other casualty, by superior force, and by robbery, but not by theft.—*Story on Bailments*, 471.

Damnum sine injuriâ esse potest. Lofft. 112.—(There may be damage or injury inflicted without any act of injustice.)

Damsel [fr. *demoiselle*, Fr.], a young single gentlewoman.

Dan (*disused*) [fr. *dominus*, Lat.]; anciently the better sort of men in this kingdom had this title; so the Spanish *Don*. The old term of honour for men, as we now say *Master* or *Mister*.

Dancing. Places kept for public music or dancing in London or Westminster, or within twenty miles thereof, require the annual license of justices of the peace under 25 Geo. II. c. 36, amended by38 & 39 Vict. c. 21, which allows them to be open after noon, whereas under 25 Geo. II. c. 36, they might not be open till after 5 p.m. The Local Government Act, 1888 (see s. 5 par. v.), appears to constitute the County Council as licensing authority. See MUSIC AND DANCING.

Danegelt, Danegeld, or **Danegold** [fr. *denegeldum*, *dane*, and *gelt*, tribute], a tribute of 1*s.* and afterwards of 2*s.* upon every hide of land through the realm, levied by the Anglo-Saxons, for maintaining forces sufficient to clear the British seas of Danish pirates, who greatly annoyed our coasts. It continued a tax until the time of Stephen, and was one of the rights of the Crown.—*Anc. Inst. Eng.*

Dane-lage, the Danish Law, which was principally maintained in the Midland Counties, and the eastern coast (the parts most exposed to the visits of that piratical people) while the Danes had sway in this country.

Dangeria, a money payment made by forest-tenants, that they might have liberty to plough and sow in time of pannage, or mast feeding.—*Manw. For. Laws.*

Dangerous goods, Act as to the carriage and deposit of, 29 & 30 Vict. c. 69, repealed by the Explosives Act, 1875. See EXPLOSIVE SUBSTANCES.

Dar, keeper, holder. This word is often joined with another to denote the holder of a particular employment or office, as *Chob-dar*, staff-holder; *Zemindar*, landholder. This compound word with *i*, *ee*, *y*, added to it, denotes the office, as Zemindar-*ee*.—*Indian.*

Dardus, a dart.

Dare, to transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo*; when to receive an equivalent, to create an obligation, it is *datio contrahendi animo*; lastly, when made *donandi animo*, from mere liberality, it is a gift, *dono datio*.—*Civil Law.*

Dare ad remanentiam, to give away in fee, or for ever.

Darogah, the chief native officer at a police, custom, or excise station.—*Indian.*

Darraign [fr. *derationo*, Med. Lat.; *desrener*, Fr.], to clear a legal account, to answer an accusation, to settle a controversy.

Darrein, a corruption of the Fr. *dernier*, the last.

Darrein presentment, *assize of*, lay only where a man had an advowson by descent from his ancestors; it is abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Data, grounds whereon to proceed; facts from which to draw a conclusion.

Date [fr. *datum*, Lat.], that part of a deed, writing, or letter which expresses the day of the month and year in which it was made. Dates began to be inserted in deeds in the reigns of Edward II. and III. A deed, however, is good, although it mentions no date, or has a false or impossible date, provided the real date of its delivery can be proved.

Dative or **Datif**, that which may be given or disposed of at will and pleasure.

Datum, a first principle, a thing given.

Daum, Dam, a copper coin, the 40th part of a rupee.—*Indian.*

Day [fr. *dies*, Lat.; *tag*. Germ.], in its largest sense the time of a whole apparent revolution of the sun round the earth, but, in its popular acceptation, that part of the twenty-four hours when it is light, or the space of time between the rising and the setting of

the sun. By the Roman Calendar the day commenced at midnight; and most European nations reckon in the same manner.

In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night; after which the following day commences.

If anything is to be done within a certain time, *of*, *from*, or *after* the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation.—*Williams* v. *Burges*, 12 *A. & E.* 635. See further HOLIDAY AND FRACTION OF A DAY.

Day in banc, was the return day of writs.

Day-book, a tradesman's journal; a book in which all the occurrences of the day are set down.

Dayeria, a dairy.—*Cowel.*

Day-rule, or **Day-writ**, a permission granted to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, etc. Abolished by 5 & 6 Vict. c. 22, s. 12.

Day-were of land [fr. *diurnalis*, *diuturna*, Lat.], as much arable land as would be ploughed up in one day's work.

Daysman, an arbitrator, an elected judge.

Days of Grace. See GRACE, DAYS OF.

Deacon [fr. *diacre*, Fr.; *diaconò*, It., Span., and Port.; *diaconus*, Lat.; διάκονος, Gk.], a minister or servant in the church, whose office is to assist the priest in divine service, and the distribution of the sacrament, etc. He may now perform any of the divine offices which a priest may, except only pronouncing the absolution and consecrating the sacrament of the Lord's Supper. By 13 Eliz. c. 12, and 44 Geo. III. c. 43, it is provided (conformably to the canons) that none shall be ordained deacon under twenty-three years, nor priest under twenty-four years of age; though as to deacons the Archbishop of Canterbury has the privilege of admitting them (by faculty or dispensation) at an earlier age. By 24 Geo. III. c. 35, the Bishop of London, or other bishop by him appointed, may ordain aliens to exercise the office of deacon or priest out of the dominions of the Crown. A deacon is not capable of any ecclesiastical promotion; yet he may be chaplain to a family, curate to a beneficed clergyman, or lecturer to a parish church. See further under the title CLERGY, and see *Phill. Eccl. Law.*

(2) A lay office among dissenters.

Dead bodies. See CORPSE.

Dead freight, the unsupplied part of a cargo, or the freight payable by a merchant where he has not shipped a full cargo for the part not shipped.

Dead man's part, the remainder of an intestate's movables, besides that which of right belongs to his wife and children. This was formerly made use of in masses for the soul of the deceased; subsequently, the administrators applied it to their own use and benefit, until the 1 Jac. II. c. 17 subjected it to distribution amongst the next of kin. In Scotland the 'dead's part' of a man's personalty is that part of which he is entitled to dispose by will.

Dead pledge [*mortuum vadium*], a mortgage of lands or goods.

Dead Rent. A rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

Dead use, a future use.

Deaf and dumb. A man that is born deaf, dumb, and blind, is looked upon by the law as in the same state with an idiot, he being supposed incapable of any understanding (1 *Bl.* 304). Nevertheless, a deaf and dumb person may be tried for felony if the prisoner can be made to understand by means of signs (1 *Leach*, C. L. 102). As to when he is a competent witness, see *Tayl. on Evid.* s. 1248.

Deafforested, or **Disafforested**, discharged from being a forest, or freed and exempted from the forest-laws.—17 *Car. I.* c. 16.

De ambitu, of obtaining a place by bribery.

Dean [fr. δέκα, Gk., ten], an ecclesiastical governor or dignitary, so called, as he is supposed to have originally presided over ten canons or prebendaries at the least. In cathedrals of the *old* foundation in England, the dean is the principal of the four chief dignitaries, exercising a general supervision over the other members of the capitular body, with special reference to the cure of souls. In cathedrals of the *new* foundation, the duties of the deans are defined by the statutes of each chapter.

Considered in respect of the differences of office, deans are of six kinds:—(1) *Deans of Chapters*, who are either of cathedral or collegiate churches. (2) *Deans of Peculiars*, who have sometimes both jurisdiction and cure of souls, and sometimes jurisdiction only. (3) *Rural Deans*, deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation; and armed, in minuter matters, with an inferior degree of judicial and coercive authority. (4) *Deans in the Colleges*

of our Universities, who are officers appointed to superintend the behaviour of the members, and to enforce discipline. (5) *Honorary Deans*, as the Dean of the Chapel Royal, St. James's. (6) *Deans of Provinces* or *deans of Bishops*. Thus the Bishop of London is Dean of the Province of Canterbury, and to him, as such, the archbishop sends his mandate for summoning the bishops of his province when a convocation is to be assembled.

Another division, arising from the nature of their office, is into deans of *spiritual* promotions, and deans of *lay* promotions. Of the former kind are deans of peculiars, with cure of souls, deans of the royal chapels and of chapters, and rural deans; of the latter kind are deans of peculiars without cure of souls, who therefore may be, and frequently are, persons not in holy orders.

Their appointments are either *elective*, as deans of chapters of the old foundation, though the Crown has, in fact, the real patronage; or *donative*, as those deans of chapters of the new foundation, who are appointed by the royal letters patent. The 3 & 4 Vict. c. 113, provides that the old deaneries (except in Wales) shall thenceforth be in the direct patronage of Her Majesty, who may, on the vacancy thereof, appoint by letters patent a spiritual person to be dean; and that no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six complete years in priest's orders, and that the dean shall reside for at least eight months in the year.

By 37 & 38 Vict. c. 63, provision is made for the re-arrangement of the boundaries of Archdeaconries and rural deaneries. The 35 & 36 Vict. c. 8, provides for the resignation of deans.

Dean of the Arches, the lay judge of the Court of Arches. See ARCHES, and PUBLIC WORSHIP REGULATION ACT.

Dean, Forest of. As to the royal mines therein, see 1 & 2 Vict. c. 43, and 24 & 25 Vict. c. 40.

De arbitratione facto, Writ of, issued when an action was brought for a cause already settled by arbitration.

Death. As to the registration of a death, see Births and Deaths Registration Act, 1874, 37 & 38 Vict. c. 88, 6 & 7 Wm. IV. c. 86, and 7 Wm. IV. and 1 Vict. c. 22; and as to an action brought for damages arising from death by accident, neglect, etc., see 9 & 10 Vict. c. 93. See ABATEMENT; PRESUMPTION OF SURVIVORSHIP.

Deathbed or **Dying Declarations** are constantly admitted in evidence. The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest in a person on the verge of the next world, which dispenses with the necessity of cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of recovery, and this may be collected from the nature and circumstances of the case, although the declarant did not express such an apprehension. It is not essential that the party should apprehend *immediate* dissolution; it is sufficient if he apprehend it to be impending. See *Taylor on Evid.*, s. 644, *et seq.* The Act 30 & 31 Vict. c. 35, ss. 6, 7, makes provision for taking the depositions of persons dangerously ill, and making the same evidence after death, and for prisoners being present at the taking of such depositions. By the Bankruptcy Act, 1883, s. 136, provision is made for the depositions of witnesses being received in evidence after their death.

As the declarations of a dying man are admitted on a supposition that in his awful situation, on the confines of a future world, he had no motive to misrepresent, but, on the contrary, the strongest motive to speak without disguise and without malice, it necessarily follows that the party against whom they are produced in evidence may enter into the particulars of his state of mind, and of his behaviour in his last moments, or may be allowed to show that the deceased was one not likely to be impressed by a religious sense of his approaching dissolution.—*Taylor on Evidence.*

Deathsman, executioner, hangman; he that executes the extreme penalty of the law.

De bene esse. This phrase, of which the origin is obscure, is used when anything is allowed to be done at a present time with the view of its being examined at a future time, and then standing or falling according to the merit of the thing in its own nature. In modern times it is chiefly used in reference to an examination, out of court and before trial, of witnesses who are old, dangerously ill, or about to leave the country, on the terms that if the witnesses continue ill or absent, their evidence be read at the trial, but if they recover or return, the evidence be taken in the usual manner. Now by R. S. C. 1883, Ord. XXXVII., r. 5, the Court or a judge may, in any cause or matter where it shall *appear necessary for the pur-*

poses of justice (see *Bidder* v. *Bridges*, 26 Ch. D. 1), make any order for the examination upon oath before any officer of the court, or any other person, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct.

Debenture [fr. *debeo*, Lat., to owe], a charge in writing (not necessarily sealed, see *British India*, etc., *Co.*, v. *Commissioners of Inland Revenue*, 7 *Q. B. D.* 165), of certain property with the repayment at a time fixed of money lent by a person therein named at a given interest. It is frequently resorted to by public companies to raise money for the prosecution of their undertakings. The period fixed for repayment is usually 3, 5, or 7 years, and the amount borrowed of each creditor is usually 50*l.* or 100*l.* or 500*l.* or some other amount divisible by ten.

The terminability and fixity in amount of debentures, being inconvenient to lenders, has led to their being superseded in many cases by *debenture stock*, which is frequently irredeemable, and usually transferable in any amounts except fractions of pounds.

The issue of debenture stock in the case of companies incorporated by act of parliament is regulated either by their special acts, or by the 'Companies Clauses Act, 1863' (26 & 27 Vict. c. 118), which provides that the same shall be a prior charge, and the interest a primary charge, and contains provisions for the enforcement of payment of arrears by the appointment of a receiver.

Also, a term used at the custom house for a kind of certificate, signed by the officers of the customs, which entitles a merchant exporting goods to the receipt of a bounty or drawback.

Debentures may now be issued charged on land in Ireland, by permission of the Landed Estates Court.

See also 28 & 29 Vict. c. 78, and MORTGAGE.

As to Debentures by County Authorities, see Local Loans Act, 1875.

Debet esse finis litium. Jenk. Cent. 61.—(There ought to be an end of law suits.)

Debet et detinet (*he oweth and detaineth*) An action shall be always in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract and bargain, or unto the lending of the money, etc., as by the obligee against the obligor. But if it be brought by or against an executor for a debt due to or from the testator, this, not being his own debt, must be sued for in the *detinet* only.—*New. N. B.* 119.

Debet et solet. If a person sue to recover any right, whereof his ancestor was disseised by the tenant of his ancestor, then he uses the word *debet* alone in his writ, because his ancestor only was disseised, and the estate discontinued; but if he sue for anything that is now first of all denied him, then he uses *debet et solet*, by reason his ancestor before him, and he himself usually enjoyed the thing sued for, until the present refusal of the tenant.—*Reg. Orig.* 140; *F. N. B.* 98.

Debet quis juri subjacere, ubi delinquit. 3 Inst. 34.—(Every one ought to be amenable to the law of the place where he commits an offence.)

Debile fundamentum fallit opus. 3 Co. 231.—(A bad foundation ruins the work.)

Debit, the left-hand page of a ledger, to which all items are carried that are charged to an account.

Debita sequuntur personam debitoris. (Debts follow the person of the debtor.)

Debitor non præsumitur donare. Jur. Civ. —(A debtor is not presumed to give.)

Debitorum pactionibus creditorum petitio nec tolli nec minui potest. Broom's Leg. Max. —(The rights of creditors can neither be taken away nor diminished by agreements among the debtors.)

Debitum et contractus sunt nullius loci. 7 Co. 3.—(Debt and contract are of no place.)

Debitum in præsenti solvendum in futuro. (A debt due at present to be paid at a future time.)

Debitum recuperatum. (A debt recovered.)

De bonis non, of the goods of a deceased person not administered. When an executor seeks to be relieved before he has got in or distributed all the estate of the deceased, the Court grants administration of the goods not administered to another person. See EXECUTORS.

De bonis propriis, of a person's own goods.

De bonis testatoris, of a testator's goods.

De bono et malo, Writs of. It was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo*; but these being found inconvenient or oppressive, a general commission for all the prisoners has long been established in their stead.—4 *Steph. Com.*, 7th ed., 315.

Debt [fr. *debitum*, Lat.; *dette*, Fr.], a sum of money due from one person to another. An action of debt lay where a person claimed the recovery of a liquidated or certain sum of money affirmed to be due to him; and it was generally founded on some contract alleged

to have taken place between the parties, or on some matter of fact from which the law would imply a contract between them. This was debt in the *debet*, which was the principal and only common form. There is another species mentioned in the books, called debt in the *detinet*, which lay for the specific recovery of goods, under a contract to deliver them.—1 *Ch. Pl.* 109. An action of debt as a technical term is now obsolete. See PLEADING.

The order of the payment of debts and expenses out of legal assets in an ordinary administration action in the Chancery Division of the High Court (Jud. Act, 1873, s. 34), is as follows:—

1st. Funeral expenses, which in the case of an insolvent estate, must be strictly reasonable and necessary only, the executor or administrator being personally liable for any excessive expenditure.

What is a strictly reasonable and necessary sum varies with the circumstances of each particular estate, and the price of the requisite articles at the particular place.

2nd. Testamentary expenses about the probate of the will, or the letters of administration in intestacy.

3rd. The costs of the creditor's suit.

4th. Crown-debts by record and specialty.

5th. Debts which have priority by statute, e.g., money due to a parish from an overseer of the poor, by virtue of his office (17 Geo. II. c. 38, s. 3).

6th. Judgments according to their priority of time.

7th. Recognizances enrolled in a court of record.

8th. Debts as well by special contract, as by simple contract.

Prior to 32 & 33 Vict. c. 46, special contract debts, as by bonds, covenants, and other instruments under seal, took priority over debts by simple contract; but this Act abolished that distinction as to priority.

By the Judicature Act, 1875, s. 10, repealing the Act of 1873, s. 25 (1), it is provided that 'in the administration of the insolvent estate of a deceased person, and in the winding up of an insolvent company the same rule shall prevail as to the rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt.'

As to what debts are provable in Bankruptcy, see Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 37.

As to attachment of debts, see that title.

Debts are now assignable at law, if the assignment is absolute, and in writing, where express notice of the assignment is given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt (Jud. Act, 1873, s. 25 (6)). See CHOSES.

Debtee-Executor. If a person indebted to another make his creditor or debtee his executor, or if such creditor obtain letters of administration to his debtor, he may retain sufficient to pay himself before any other creditors whose debts are of equal degree.—*Plowd.* 543.

To secure the general body of creditors when the estate is insufficient, a creditor to whom administration is granted may be compelled to give a bond conditioned to pay *pro ratâ* each creditor according to his degree.

Debtor, he that owes something to another. See CREDITOR and BANKRUPT.

Debtor-Executor. At law, if a testator appoints his debtor executor, the debt is released. In equity, however, the executor is accountable for the amount of his debt, as assets of the testator.

Debtor's Summons. By the Bankruptcy Act, 1869, s. 7, it was provided that a debtor's summons might be granted by the Court of Bankruptcy on a creditor proving to its satisfaction that a debt sufficient to support a petition in bankruptcy was due to him from the person against whom the summons was sought, and that the creditor had failed to obtain payment of his debt, after using reasonable efforts to do so. The Bankruptcy Act, 1883, has replaced this process by a 'Bankruptcy Notice' (see BANKRUPTCY NOTICE), which is applicable in the case of an unpaid *judgment* debt of *any amount*.

Debtors' Act, 1869 (32 & 33 Vict. c. 62).—This act abolishes imprisonment for debt except in case of default of payment of penalties, default by trustees or solicitors, and certain other cases (see s. 4), and provides for committal of debtors in default of payment of judgment debts which the debtor *can* but *will not* pay, and in certain other cases (s. 5). It also provides for the punishment of fraudulent debtors. The Debtors' Act, 1878, 41 & 42 Vict. c. 54, gives a judicial *discretion* in the case of default by trustees or solicitors. As to Ireland see 35 & 36 Vict. c. 57.

De cætero, henceforth.

Decanal, pertaining to a deanery.

Decanus, a dean.

Decapitation, the act of beheading.

Decedent, a deceased person.

Deceit [fr. *deceptio*, Lat.], fraud, cheat,

craft, or collusion used to deceive and defraud another.

There was formerly a writ of deceit, which was an action brought in the Common Pleas, to reverse a judgment obtained in any real action, by fraud or collusion between the parties to the prejudice of the right of a third person. It was abolished by 3 & 4 Wm. IV. c. 27, s. 36.

By the civil law every person is bound to warrant a thing that he sells or conveys, although there be no express warranty; but the common law binds him not, unless there be a warranty, either express or by implication of law; for *caveat emptor*.—1 *Inst.* 10, *n*, *a*.

An action on the case, in nature of deceit, may be maintained for the breach of an *implied* warranty, as if a merchant sell cloth to another (who has not seen it, and who relies on the merchant's skill), *knowing* it to be badly fulled; although there be not any express warranty, yet an action on the case in nature of deceit will lie against him, because it is a warranty in law. In cases of this kind, however, which are grounded merely on the deceit, it is essentially necessary that the knowledge of the party, or, as it is technically termed, the *scienter*, should be averred, and also proved.

Decem tales (*ten such*). If, when a trial *at bar* is called on, a sufficient number of jurors do not attend, the trial must be adjourned, and a *decem* or *octo tales*, according to the number deficient, awarded, as at common law; for the 6 Geo. IV. c. 50, s. 37, which allows the *tales de circumstantibus*, is expressly confined to trials at *Nisi Prius* and the assizes.—1 *Chit. Arch. Prac.*

Decennary, a town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred.—1 *Bl. Com.* 114.

Decet tamen principem servare leges, quibus ipse servatus est. (It behoves indeed the prince to keep the laws by which he himself is preserved.)

Decies tantum, a writ which lay against a juror, who had taken money of either party for giving his verdict, to receive *ten times as much* as the sum taken.—38 *Edw. III.* c. 12, repealed by 6 Geo. IV. c. 50. s. 62.

Decimation. The punishing every tenth soldier by lot for mutiny or other failure of duty was termed *decimatio legionis* by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centestimatio*); also tithing or tenth part.

Decimæ, tenths or tithes. See TITHES.

Decimæ debentur parocho. (Tithes are due to the parish priest.)

Decimæ de decimatis solvi non debent.—(Tithes are not to be paid from that which is given for tithes.)

Decimæ de jure divino et canonica institutione pertinent ad personam. Dal. 50.—(Tithes belong to the parson by divine right and canonical institution.)

Decimæ non debent solvi ubi non est annua renovatio; et ex annuatis renovantibus simul semel. Cro. Jac. 42.—(Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.)

Deciners, Decenniers, or **Doziners**, such as were wont to have the oversight of the Friburgs or views of frankpledge for the maintenance of the public peace. The limit and compass of their jurisdiction was called *decenna*, because it commonly consisted of ten households; as every person, bound for himself and his neighbours to keep the peace, was styled *decennier*.—*Bract.* l. 3, t. 2, c. xv.

Decision, a judgment.

Decisive oath [*sacramentum decisionis*, Lat.], in the Civil Law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him.—*Cod.* 4, 1, 12.

Declarant, a person who makes a declaration.

Declaration, a proclamation or affirmation, open expression or publication.

In law, it was a statement on the plaintiff's part of his cause of action. It followed after service of the writ of summons. The plaintiff must have declared in a personal action, before the end of the term next after the defendant's appearance, otherwise a judgment of *non pros.* might be signed by the defendant. But if no such *non pros.* were obtained then he might declare at any time within a year next after the appearance of the defendant, unless otherwise ordered by the Court or a judge; but if he did not declare within that period, he would be deemed out of court.

Declarations are no longer used in actions, but in their place is substituted a statement of claim. See STATEMENT OF CLAIM.

Declaration in lieu of oath. By 5 & 6 Wm. IV. c. 62, 'the Statutory Declarations Act, 1835,' for the abolition of unnecessary oaths, any justice of the peace, notary public, or other officer authorized to administer an oath, is empowered to take voluntary declarations in the form specified in the Act; and any person wilfully making such declaration false in any material particular is guilty of a misdemeanour. See AFFIRMATION.

Declaration of insolvency, a declaration by any person of inability to pay his debts which, when filed in the Bankruptcy Court, amounts to an 'act of bankruptcy.'—*Bankruptcy Act*, 1883, 46 & 47 Vict. c. 52, s. 4, subs. (8).

Declaration of Paris, a state paper agreed upon at the conclusion of the Crimean war, by the representatives of Great Britain, France, Austria, Russia, Sardinia, and Turkey (Feb. 26, 1856), in which the following agreements on maritime law were come to :—

Privateering is abolished.

The neutral flag covers enemy's goods save contraband of war.

Neutral goods save contraband of war are not liable to capture under enemy's flag.

Blockades to be binding must be real.—(See also LETTERS OF MARQUE and PAPER BLOCKADES.)

Declaration of right. See BILL OF RIGHTS.

Declaration of title, *an Act for obtaining a*, 25 & 26 Vict. c. 67. This Act, after reciting that it is expedient to enable persons having interest in land, to obtain a judicial declaration of their title to the same, so as to enable them to make an indefeasible title to persons claiming under them, as purchasers, for a valuable consideration, enacts : That every person claiming to be entitled to, or to have a power of disposing of, for his own benefit, land (not of copyhold or customary tenure) for an estate of fee-simple in possession absolutely or subject to incumbrances, estates, etc., or entitled to apply for the registration of an indefeasible title, under the Transfer of Land Act (25 & 26 Vict. c. 53), may petition the Court of Chancery (now the Chancery Division of the High Court of Justice,—see Judicature Act, 1873, s. 34 (2)) —for a declaration of title.

This Act, which was little used, is still in force, although further and new provisions, also little used, for the declaration of title to land, and the registration of titles, are now made by the Land Transfer Act, 1875, as to which see LAND TRANSFER.

For title conferred by the Landed Estates Court in Ireland, see 28 & 29 Vict. c. 88, and LANDED ESTATES COURT (IRELAND).

Declaration of trust. To prevent the inconvenience which arose from parol declarations and secret transfers of uses, the Statute of Frauds 29 Car. II. c. 3, s. 7, requires that all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing. By the eighth section, where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall arise or result by implication of law, or be transferred or extinguished by act or operation of law, such trust or confidence shall be of the like effect as if this statute had not been made. And by the ninth section, all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by last will or devise.

It appears that this statute does not extend to the declaration or creation of trusts of mere personalty. But in practice, a parol declaration should never be relied on, for the intention to declare a trust should be irrevocably expressed. There is no form or particular set of words, or mode of expression, prescribed for the purpose of raising a trust. Intention will create a trust, provided the object of the gift, and the gift itself, can be correctly ascertained.—1 *Sand. Uses*, 344.

Declaration of uses must be in writing.—29 *Car. II.* c. 3, s. 7.

The conveyances by bargain and sale and covenant to stand seised are in fact nothing more than declarations of uses ; for the use being served out of the seisin of the bargainor and covenantor in those conveyances, they merely serve to declare the use to the bargainee and covenantee. But upon such conveyances as transmute the possession, the use may be declared by a deed or writing distinct from the conveyance by which the possession is transferred. It is now universally the practice to declare the use in the same deed immediately after the habendum. —1 *Sand. Uses*, 219. See APPOINTMENT.

Declarator, an action whereby it is sought to have some right of property, or of status, or other right judicially ascertained and declared.—*Bell's Scotch Law Dict.*

Declarator of property, when the complainer, narrating his right to lands, desires he should be declared sole proprietor, and all others discharged to molest him in any way. —*Ibid.*

Declarator of trust, is resorted to against a trustee who holds property upon titles *ex facie* for his own benefit.—*Ibid.*

Declaratory actions, those wherein the right of the pursuer is craved to be declared ; but nothing claimed to be done by the defender.—*Ibid.*

Declaratory decree, a binding declaration of right in equity without consequential relief. See 15 & 16 Vict. c. 86, ss. 50, 51.

Declaratory part of a law, that which clearly defines rights to be observed and wrongs to be eschewed.

Declaratory statutes, those which declare what the common law is and ever has been.

Declinatory plea, a plea of sanctuary, also pleading of benefit of clergy before trial or conviction. Abolished by 6 & 7 Geo. IV. c. 28, s. 6.

Decoctor, a bankrupt.

Decoity, corrupted from *Dakaiti*, gang-robbery.—*Indian.*

Decollation, the act of beheading.

De consuetudinibus et servitiis, a real writ to recover rent in arrear. Abolished by 3 & 4 Wm. IV. c. 27.

De contumace capiendo. A writ issued out of the Court of Chancery for the commitment of a person pronounced by an ecclesiastical court to be contumacious and guilty of contempt. See EXCOMMUNICATION.

De corpore comitatûs (*from the body of the county*).

Decoy [probably from *kooy*, Du., a cage], a place made for catching wild water-fowl. As to the rights of an owner of such a place, see 11 *Mod.* 74.

Decree [fr. *decretum*, Lat.], an edict, a law. The term was also used for the judgment of a Court of Equity. (See 1 & 2 Vict. c. 110.) But now, by the Judicature Acts, 1873 & 1875, the expression *judgment*, which was formerly used only in Courts of Common Law, is adopted in reference to the decisions of all Divisions of the Supreme Court; and (Act of 1873, s. 100) includes *decree*. See JUDGMENT, and consult *Seeton on Decrees.*

Decree nisi, the order made by the Court for divorce, on satisfactory proof being given in support of a petition, for dissolution of marriage; it remains imperfect for at least six months (which period may be shortened by the Court down to three), and then, unless sufficient cause be shown, it is made absolute on motion, and the dissolution takes effect, subject to appeal. See *Browne on Divorce; Chitty's Statutes*, vol iv., tit. '*Matrimonial Causes.*'

Decreet arbitral, the award of an arbitrator.—*Scotch phrase.*

Decreet cognitionis causâ, when a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the Court then pronounces a decree *cognitionis causâ.*—*Bell's Scotch Law Dict.*

Decreet of exoneration, discharging trustees, executors, factors, tutors, and others.—*Ib.*

Decreet of locality, dividing and proportioning among the heritors, a stipend modified to a minister.—*Ib.*

Decreet of modification, that which modifies a stipend to a minister, but does not divide or apportion it among the heritors. —*Ib.*

Decreet of valuation of teinds, a sentence of the Court of Sessions (who are now in the place of the Commissioners for the Valuation of Teinds) determining the extent and value of teinds.—*Ib.*

Decreta, judicial sentences given by the emperor as supreme judge.—*Roman Law.*

Decreta conciliorum non ligant reges nostros. Mo. 906.—(The decrees of councils bind not our kings.)

Decretal order, a chancery order in the nature of a decree. See DECREE.

Decretals, a volume of the canon law, forming the second part, so called as containing the decrees of sundry Popes; or a digest of the canons of all the councils that pertained to one matter under one head.

Decretum est sententia lata super legem. (A decree is a sentence made upon the law.)

Decrowning, the act of depriving of a crown.

Decuriare, to bring into order.

Dedbana, an actual homicide or manslaughter.

Dedi et concessi (*I have given and granted*), the operative words in grants, etc. The word 'give' or the word 'grant' in a deed, executed after the 1st day of October, 1845, shall not imply any covenant in law in respect of any tenements or hereditaments, except so far as the word 'give' or the word 'grant' may, by force of any Act of Parliament, imply a covenant.—8 & 9 *Vict.* c. 106, s. 4.

Dedicate, to make a private way public by acts evincing an intention to do so.

Dedication-day [*festum dedicationis*, Lat.], the feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighbouring villages who usually came thither: and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days.—*Cowel.*

De die in diem (*from day to day*).

Dedimus potestatem (*we have given the power*), a writ or commission to one or more private persons for the speeding of some act appertaining to a judge, or a court. It is granted most commonly upon suggestion that the party who is to do something before a judge, or in a court, is so weak that he cannot travel.

On renewing the commission of the peace there issues a writ of *dedimus potestatem* out of Chancery, directed to some justice, to take the oath of him who is newly inserted.

Formerly the judges would not suffer litigants to appoint attorneys in any action or suit without this writ; but it has since been provided by statute, that the plaintiff or

defendant may appoint attorneys without such process.

Dedition, the act of yielding up anything; surrendry.

De donis, Statute. See *Donis Conditionalibus.*

Deed [fr. *dæd*, Sax.; *dêd*, *gadêd*, Goth.; *daed*, Dut.], a formal document on paper or parchment duly signed, sealed, and delivered. It is either an indenture (*factum inter partes*) needing no actual indentation (8 & 9 Vict. c. 106, s. 5), made between two or more persons in different interests, or a deed-poll (*charta de unâ parte*) made by a single person or by two or more persons having similar interests.

The requisites of a deed are these:—

(1) Sufficient parties and a proper subject of assurance.

(2) The deed must not rest on an illegal consideration; and to hold good against creditors it must rest on a valuable consideration.

(3) It must be written, engrossed, printed, or lithographed, or partly written or engrossed, and partly printed or lithographed in any character or in any language, on paper, vellum, or parchment, since these materials best unite the two qualities of durability and difficulty of concealing alteration or erasure.

(4) The language employed should be sufficient in point of law, intelligible without punctuation, and clear without the aid of stops or parentheses.

Usage has arranged the text of a conveyance *inter partes*, in a formal and well-understood sequence; and although it is not absolutely necessary that a deed should be drawn in accordance with the generally received formulary, provided it exhibit the intention of the parties, yet it is not advisable to deviate from it unless in a matter of urgent necessity. A properly prepared deed, then, is arranged in the following parts.:—

(*a*) Commencement or *exordium*, date and parties.

The commencement sets forth its style or character. The date follows in indentures and contracts, but is generally placed in the last or peroration clause in a deed-poll. If there be no date, or an impossible date, the deed takes effect from its actual delivery. The date, however, should always be filled in before execution. The parties are described by their several names, their rank, profession, or calling, and their places of abode, except in the case of a peer. The assumption of any additional name should be stated so as to preserve identity on the face of the title. A mistake will not vitiate the instrument, if the party can be identified by extraneous evidence.—*Nihil facit error nominis cum de corpore constat.*

Every person who conveys any estate or interest, or enters into a covenant, or is to be bound by the deed, should be made a party to it.

Parties are classified in parts according to their several interests. Persons having joint interests except in a deed of partition should be of the same part, but those having distinct though undivided interests should be of several successive parts. Those who are to transfer any interest or relinquish any right should come first, and amongst them, those having legal estates before those having equitable only, and the larger interests should precede the lesser. Then consenting parties and covenantors. After these, those who take any estate or interest, and, amongst these, trustees follow real owners. Lastly, those who are inserted to fix them with notice of the deed, as creditors, legatees, trustees, and executors.

When a person acts in two or more capacities, he should be named in distinct parts according to such several capacities.

Husband and wife are generally of the same part except in separation deeds.

The 8 & 9 Vict. c. 106, s. 5, enacts that under an indenture executed after the 1st day of October, 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the same indenture.

Before this statute, however, a person not named in an indenture could and still can take a remainder, or a use, or the benefit of a trust, or any authority by a letter of attorney.

(*b*) *Recitals.* These are either narratives of past facts, or a statement of the purpose of the deed. They are not a necessary part of an assurance, yet they frequently become material as an aid to collect the intention of the parties to the instrument, and a key to its construction. Thus a recital may restrain the effects of general phraseology in the operative part of a deed, and although it is not evidence as against strangers, yet it is conclusive as to the facts which it sets forth between the parties to it, and those claiming under them.

(*c*) *Testatum*, witnessing, or operative clause, comprehending—

1. The consideration and its receipt. When a deed contains more than one *testatum*, the whole consideration should generally be

stated in the first, unless it can be apportioned amongst the different *testata*. Nominal considerations are for the most part useless.

2. The name of the grantor. When he is a trustee, it should be stated at whose request he makes the deed, and if any particular mode of execution or attestation be prescribed, it should be set forth. The omission of the grantor's name may be constructively supplied, when the context shows who is intended to be the grantor.

3. The operative verbs of transfer.

4. The name of the grantee, with appropriate words of limitation.

(*d*) *The Parcels*, i.e., the description of the property affected, with any savings or exceptions.

(*e*) *General Words* with the sweeping clauses.

Prior to the Conveyancing Act, a conveyance in 'general words' enumerated all the particulars intended to pass to the grantee. But s. 6 of that act enacts that a conveyance of land shall operate to convey all 'buildings, erections, fixtures, commons,' etc., etc., and so dispense with the enumerations of such particulars in the conveyance itself; and s. 63 in like manner dispenses with the 'estate clause' or clause conveying all the estate right, etc., of the conveying parties.

All the parts which have been enumerated are as a whole technically denominated the premises (*præmissa*) or the matters which precede. The premises should name all the parties, as well active as passive, i.e., both grantors and grantees, and set forth with certainty the thing granted, with any exceptions reserved. This word has also a popular sense, meaning the thing granted by the deed.

(*f*) *Habendum*, limiting and defining the interest.

This part is a non-essential formality, expressing the extent of the grantee's interest in the thing granted. The grantee should be named, and he would take although not mentioned in the former part of the deed. While nothing can be limited in the *habendum* which has not been given in the premises, yet it may abridge, qualify, or enlarge the premises, but where they are repugnant, the premises will operate, in preference to the *habendum*.

There is not any *habendum* in an appointment under a power, a covenant to stand seised, or a simple declaration of uses, because such deeds themselves fulfil that office by limiting the estate to be created.

(*g*) *Tenendum*. This is usually joined with the *habendum*, but it is unnecessary, since the tenure is never expressed, except upon a sub-grant or lease reserving rent.

Where there is a declaration of uses, the words 'and assigns for ever' are omitted. In annuity-deeds, and money-assignments, the phrase 'To have, hold, receive, and take,' is the common form of *habendum*.

(*h*) *Declaration of uses* in deeds operating by virtue of the Statute of Uses (27 Hen. VIII. c. 10). A person may take an estate under this declaration, although not a party to the deed.

(*i*) *Declaration of trusts*, when necessary, is usually combined with the declaration of uses.

(*j*) *Declaration against dower* in purchase-deeds succeeds the limitation of the estate.

(*k*) *Reddendum* in leases, which reserves something to the grantor out of the estate transferred, such as rent.

The phrase 'yielding and paying' in a lease by indenture executed by the lessee will imply after entry a covenant to pay rent in the absence of one expressed. (*Platt on Covenants*, 50, *et seq.*) It is generally advisable, except in leases pursuant to statute, to reserve the rent at large, not specifying to whom made, since the rent will be annexed to the reversion and belong to the person for the time being entitled to the latter.

(*l*) *Conditions*, conditional limitations, provisoes for cesser of interests, clauses of restraint, and for redemption, and special agreements, are generally here inserted, when stipulated for between the parties.

(*m*) *Powers*; e.g., a power to lease.

(*n*) *Covenants*. See COVENANT.

(*o*) The conclusion, peroration, or *testimonium*, connecting the contents of the deed with its signatures and seals.

All these several parts, then, thus arranged, make up a formally prepared deed.

(5) The deed being engrossed, the next step is its *execution*, which consists of three acts, viz. :—

(*a*) *Signing* (which, perhaps, is not necessary. See *Aveline* v. *Whisson*, 4 *M. & G.* 801).

(*b*) *Sealing*, which is a Norman usage, and makes the assurance a specialty. It is, however, but a simple formality. There should be a distinct seal for every signature: and it is so usual to state on the face of the deed, in express terms, that the seal of each person signing is that opposite his signature, that it has been insisted on in some cases that it should be so done before the deed is stamped.

(*c*) *Delivery*, which completes the efficacy of the deed, and whence it takes effect, if, as we have already seen, there be a false, or impossible, or no date.

(6) The deed must be read before execution, if any of the parties request it, otherwise it will be void, so far as the requestor is con-

cerned; and a false reading will avoid it so far as it was misread (1 *Touch.*, p. 56). Seeing that the draft of a deed is usually submitted to the legal advisers of the several parties, to be approved of by them on their client's behalf, the request of reading seldom occurs. In strict practice, the engrossment is examined with the draft by the solicitors of the parties before an appointment for its execution is fixed.

(7) The *attestation* is not essential, unless it be required by a particular statute, or by the express terms of a power. See POWER. In practice, however, every deed is attested, in order to render it more easy of proof. One witness is enough (unless more are expressly required), since it renders the proof less difficult after death (read 17 & 18 Vict. c. 125, s. 26). A witness need not see the party execute the deed, for if such party request him to attest his signature after it has been written, and he do so, it will be sufficient.

(8) The *endorsed receipt-clause* acknowledging the payment of the consideration-money, signed by the recipient, should never be omitted, for although the receipt in the body of the deed is conclusive at law, between the parties themselves, equity regards the endorsed receipt as the effectual discharge, since a future purchaser is not then required, unless he have notice to the contrary, to ascertain whether in fact the money was paid, while its absence is implied or presumptive notice of non-payment, thus charging the lands in equity with its liquidation, and imposing on a future purchaser the necessity of requiring proof of its discharge, or, that wanting, a proper receipt from the person entitled to it (see 3 *Prest. on Abstracts*, 15), when its wants may be disregarded.

(9) *Extrinsic and occasional ceremonies.*

These are enrolment in Chancery of grants by the Crown, bargains and sales of freeholds, pursuant to 27 Hen. VIII. c. 16, or under the Land-Tax Acts, gifts of land to charities under 9 Geo. II. c. 36, and disentailing assurances according to 3 & 4 Wm. IV. c. 74; and registration of assurances affecting property in Yorkshire, Middlesex, Kingston-upon-Hull, and the Bedford Levels, and annuity-deeds in the Common Pleas under 18 Vict. c. 15, s. 12.

Whilst enrolment authenticates the transaction by giving a full transcript of the assurance, registration only affords a clue to it, since it generally discloses the date, names of the parties, the parcels, and subscribing witnesses only.

(10) The *stamp* does not strengthen the efficacy of a deed, but simply renders it admissible in evidence. A deed may be stamped before or after execution. See STAMPS.

Though a deed may be good in point of form, as apparently possessing the external and internal circumstances necessary to its validity, yet it may be rendered invalid from many causes, which may be thus classified:—

(I.) Those making it void *ab initio*, when it can never take effect; as

(*a*) Where it is wanting in any of the essentials, for it is then absolutely null against all persons.

(*b*) Where a party has made it under threat, for then it is void as to him.

(II.) Those making it voidable, not being void from its beginning; as

(*a*) By dissent of parties, for instance the repudiation of an infant or wife's deed, after majority or upon widowhood.

(*b*) By dissent of strangers, as the grantee of a deed-poll or an indenture not executed by him, disclaiming the estate thereby given to him, or a husband repudiating his wife's purchase.

(III.) Those making it void by something *ex post facto*; as

(*a*) By an extra-judicial act, as a razure or interlineation, or breaking off the seal, with the assent of the parties, or delivering up the deed to be cancelled. The act of a spoliator will not avoid a deed. To prevent any after-dispute, any alteration or interlineation made in a deed before execution should be particularised in the attestation clause. If a freehold estate have already passed by the deed, its cancellation will not divest such estate so as to revest it in the original owner; there must be a re-transfer to this effect.

(*b*) By a judicial act, as where by a decision of a Court a deed is declared void (technically called a *vacat* of the instrument), by reason of fraud, or an illegal consideration, or that it attempts to derogate a prior and superior right.

The rectification or setting aside or cancellation of deeds or other written instruments, formerly part of the jurisdiction of the High Court of Chancery, is continued to the Chancery Division of the High Court of Justice by the Judicature Act, 1873, s. 34.

Deed of covenant. Covenants are frequently entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

Deed-poll, a single deed in the form of a manifesto or declaration to all the world of the grantor's act and intention. If there be no recital it usually speaks in the first person, but where recitals are introduced it speaks in the third person.

Deeds of Composition. See COMPOSITION.

Deemsters [fr. *dema*, Sax., a judge or umpire], Judges in the Isle of Man and in Jersey, who, without process or any charge to the parties, decide all controversies in those islands; they are chosen from among the parties themselves.—*Cam. Brit.*; and 4 *Inst.* 284. See DEMPSTER.

Deer. As to the right of property in deer, see *Davies* v. *Powell*, 7 *Mod.* 249. The statute 24 & 25 Vict. c. 96, contains many provisions as to killing and stealing deer, and otherwise for their protection (ss. 11—16), and see also 7 & 8 Geo. IV. c. 29, s. 26.

Deer-fald, a park or fold for deer.

Deer hayes, engines or great nets made of cord to catch deer.—19 *Hen. VIII.* c. 11.

De essendo quietum de tolonio, a writ which lay for those who were by privilege free from the payment of toll, on their being molested therein.—*F. N. B.* 226.

De expensis civium et burgensium, an obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of parliament.—4 *Inst.* 46.

De expensis militum, a similar writ to the last, to levy the expenses of the knights of the shire for attendance in parliament.

De facto, in fact, opposed to *de jure*, of right.

The 11 Hen. VII. c. 1 (A.D. 1494), was made for the protection of all subjects who assist and obey a king *de facto*.

Defamation, general term for words spoken (slander) or written (libel) to the prejudice of a person's character, in such wise as to support an action by such person against the speaker or writer. The ecclesiastical Courts had formerly a concurrent jurisdiction in such an action, but such jurisdiction was abolished by 18 & 19 Vict. c. 41.

Default, omission of that which a man ought to do; neglect.

When a defendant neglects to take certain steps in an action, which are required by the rules of Court, the Court may thereupon give judgment against him by default. The defendant allows judgment by default either intentionally or through mistake or neglect; intentionally, where he has no merits, or where he does so according to a previous agreement with the plaintiff; through mistake, when he delivers a pleading so defective that it is treated as a nullity; and through neglect, when perhaps he has no merits, but omits to appear, plead, etc., within the time limited by the rules of the Court for that purpose. This is an implied confession of the action. See the titles JUDGMENT, APPEARANCE, and PLEADING.

Default Summons, a procedure in the County Courts under s. 86 of the County Courts Act, 1888, 51 & 52 Vict. c. 43, for the summary recovery of a debt or liquidated demand. The default summons, which the plaintiff may, upon filing an affidavit of the debt, etc., cause to be issued instead of the summons in the ordinary form, is personally served on the defendant, and if he do not, within 8 days after service, give notice in writing by post or otherwise to the registrar of the court from which the summons issued of his intention to defend, the plaintiff may, after 8 days and within 2 months, 'upon proof of service or of an order for leave to proceed as if personal service had been effected,' have judgment entered up for the amount of his claim and costs.

Defaulter, one who makes default.

Defeasible [fr. *défaire*, Fr., to make void], that which may be annulled or abrogated.

Defeazance [fr. *défaire*, Fr., to undo], a collateral deed accompanying another, providing that upon the performance of certain matters, an estate or interest created by such other deed shall be defeated and determined. It is of three kinds:—(1) As applicable to freeholds. This is now seldom used, as it is preferable to set forth the conditions in the deed creating the freehold, so as to be complete in itself; (2) as applicable to chattels, real and executory interests, such as covenants, rents, and annuities; and (3) as applicable to bonds, recognizances, and warrants of attorney. The first kind, when it is adopted, must be made at the same time with the assurance to which it relates, and form a part of the same transaction. The second and third kinds may be made either at the time of, or at any time after, the execution of the principal assurance.

A defeazance should recite the deed to be defeated and its date, and must be made between the same parties as are interested in the recited deed or their representatives, and with the same formalities as the deed which created the estate to be defeated; it must be of a thing defeasible, and all the conditions must be strictly performed before the defeazance can be consummated.

So long as it was the law that a condition in a lease not to alien without license was determined by the first license granted (*Dumpor's case*, 1 *Sm. L. C.*), a defeazance was frequently adopted in order to revive the condition, and so virtually to limit the

license to the particular assignment; but the 22 & 23 Vict. c. 35, provides that where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition in lease, shall be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, etc.

Defectum, challenge *propter*. See CHALLENGE.

Defectus sanguinis, failure of issue.

Defence [fr. *defensio*, Lat.], popularly a justification, protection, or guard: in law, a denial by the defendant of the truth or validity of the plaintiff's complaint.

In civil matters, a defence is either (1) by statement of defence, which may be a denial of the plaintiff's right, or may be an allegation of a set-off or counterclaim by the defendant which will cover wholly or in part the claim of the plaintiff; or (2) by demurrer which seeks to defeat the plaintiff's claim by showing that the facts alleged on his behalf do not show any cause of action to which effect can be given by the Court as against the defendant so demurring. See STATEMENT of DEFENCE; DEMURRER.

Where the plaintiff's claim is for a liquidated sum only, or where a landlord seeks to eject a tenant whose term has expired, or been determined by notice to quit, he may specially indorse his writ, and in such case leave must be obtained to defend (R. S. C. 1883, Ord. III., Rule 6; Ord. XIV.).

In *Criminal* matters, when a prisoner is brought to the bar and arraigned, he either confesses the charge, stands mute of malice, or does not answer directly to the charge, which may be entered as a plea of not guilty, or pleads to the jurisdiction, or in abatement, or demurs, or pleads specially in bar, or generally, that he is not guilty. In addition to these several modes of defence, there were formerly what were called declinatory pleas—the plea of sanctuary and the plea of clergy—both now abolished.

The defence in *Ecclesiastical* Courts may be called the answer, in which the defendant denies, extenuates, or justifies.

The defence of one's self, and the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant, is a right which belongs to every person. If a man, or one standing in any of these relations to him, be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace which happens is chargeable upon him only who began the affray. Self-defence, therefore, is justly called the primary law of nature, and it is not, neither can it be, in fact, taken away by the law of society. In the English law it is held an excuse for breaches of the peace, nay even for homicide itself; but care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would himself become an aggressor.

Defence Acts. These Acts 5 & 6 Vict. c. 94; 23 & 24 Vict. c. 112; 27 & 28 Vict. c. 89; and 36 & 37 Vict. c. 72, allow compulsory purchases by the Board of Ordnance of land required for the defence of the country, as for the erection of fortifications, etc.

Defend, to forbid or deny.

Defendant [*Deft.* abbrev.], the person sued in an action, or indicted for a misdemeanour.

Defendemus, a word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation.—*Bract.* l. 2, c. xvi.

Defender, Scotch term for defendant.

Defender of the Faith [*fidei defensor*, Lat.], a peculiar title, belonging to the Sovereign of England, as that of *Catholic* to the King of Spain, and that of *Most Christian* to the King of France. These titles were originally given by the Popes of Rome; and that of *Defensor Fidei* was first conferred in 1521 by Pope Leo. X. on our King Henry VIII. as a reward for writing against Martin Luther. The Pope, on King Henry's suppressing the monasteries, not only sentenced him to be deprived of this title, but to be deposed also from his crown; but in the thirty-fifth year of his reign, this title was confirmed by parliament, and has continued to be used by all succeeding sovereigns to this day.—*Encyc. Lond.*

Defendere se per corpus suum, to offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. s. 46. See BATTEL.

Defendere unicâ manu, to wage law; a denial of an accustaion upon oath. See WAGER OF LAW.

Defeneration [fr. *de*, of, and *fœnero*, Lat., to lend upon usury], the act of lending money on usury.

Defensa, a park or place fenced in for deer.

Defensiva, a lord or earl of the marches, who was the warden and defender of his county.—*Cowel.*

Defensive allegation, the mode of propounding facts relied upon as a defence by a defendant in the spiritual courts. He is entitled to the plaintiff's answer upon oath, and may thence proceed to proofs as well as his antagonist.—3 *Steph. Com.*

Defenso. That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso:* so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was enclosed or fenced, to secure the growth of the underwood from the injury of cattle.—*Cowel.*

Defensum, an enclosure of land, any fenced ground.

Deferred Life Annuities, annuities for the life of the purchaser, but not commencing until a date subsequent to the date of buying them, so that if the purchaser die before that date, the purchase money is lost. Granted by the Commissioners for Reduction of the National Debt. See 16 & 17 Vict. c. 45, s. 2.

Deferred Stock. Stock in a joint stock company is occasionally divided into 'preferred,' the holders of which are entitled to a fixed dividend payable out of the net earnings of the whole stock, and 'deferred,' the holders of which are entitled to all the residue of the net earnings, after such fixed dividend has been paid to the holders of the 'preferred.' See as to railway companies the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, s. 13, which limits the power to create such stock to cases where a 3 per cent. dividend has been paid for one year, and puts a fixed maximum dividend on the 'preferred' at the rate of 6 per cent.

Deficiente uno sanguine non potest esse hæres. 3 Co. 41.—(One blood being wanting, he cannot be heir.) But see 3 & 4 Wm. IV. c. 106, s. 9, and 33 & 34 Vict. c. 23, s. 1.

Deficit, something wanting.

De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti. Bacon.—(A question cannot be admitted as to the good faith and honesty of a judge; but otherwise concerning his knowledge, whether he be mistaken as to the law or the fact.)

It is an ancient rule that a judge of record is not liable to an action for anything done by him in his judicial character. This immunity is given for the public good and the advancement of justice; for it is obvious that to administer law properly, the judge should be free in thought and independent in character. A judge, however, is not excused for neglect of duty or misconduct, or *à fortiori* for corruption.

Definitive sentence, the final judgment of a spiritual Court, in opposition to provisional or interlocutory judgment.

Deforcement, the holding of lands or tenements to which another person has a right; so that this includes as well an abatement, an intrusion, or a disseisin, as any other species of wrong by which he that has a right to a freehold is kept out of possession. It is such a detainer of the freehold from him having the right of property, but not the possession under that right, as falls within none of the injuries of abatement, intrusion, disseisin, or discontinuance.—3 *Steph. Com.*

Deforceor, or **Deforcor,** he that overcomes and casts out by force.—*Blount.*

Deforciant, the person against whom the fictitious action of fine was brought. Abolished by 3 & 4 Wm. IV. c. 74.

Deforciare, to withhold property from the right owner.

Deforciatio, a distress; a holding of goods for satisfaction of a debt.—*Paroch. Antiq.* 239.

De frangentibus prisonam, Statute of, 1 Ed. II., st. 2, which enacts that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence.

Defraudation, privation by fraud.

Defunct, one that is deceased; a dead man or woman.—*Encyc. Lond.*

Degradation, a deprivation of dignity; dismission from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. These are two sorts by the canon law: one, *summary,* by word only; the other *solemn,* by stripping the party degraded of those ornaments and rights which are the ensigns of his decree. Degradation is otherwise called deposition, but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at common law and also by act of parliament.—13 *Car. II.* c. 16.

Degradations, a term for waste in the French law.

De gratiâ speciali certâ scientiâ et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem. 1 Co. 53.—(The clause 'Of our special grace, certain knowledge, and mere motion,' is of no avail in those things in which it is presumed that the prince was ignorant.)

Degree [fr. *degré,* Fr.; *degrat,* O. Fr.; *gradus,* Lat.], a step; the distance between relations; the state of a person, as to be barrister-at-law, or to be a Bachelor or Master of Arts of a University.

De grossis arboribus decimæ non dabuntur, sed de sylvâ cædubâ decimæ dabuntur. 2. R. R. 123.—(Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.)

Dehors [Fr.], foreign to, outside, out of the point in question.

De idiotâ inquirendo a common law writ

to inquire whether a man be an idiot or not. It was tried by a jury of twelve men; and if they found him *purus idiota*, the profits of his lands and the custody of his person might have been granted by the sovereign to some subject who had interest enough to obtain them. Obsolete.—*F. N. B.* 232.

Dei judicium, the old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. See ORDEAL.

De incremento (*of increase*).

De injuriâ suâ propriâ absque tali causâ (more compendiously called the traverse *de injuriâ*), a species of traverse by replication in pleading, now obsolete, which varied from the common form, and which, though, confined to particular actions, and to a particular stage of the pleadings, was of frequent occurrence. It always tendered issue; but, on the other hand, differed (like many of the general issues) from the common form of a traverse, by denying in general and summary terms, and not in the words of the allegation traversed.

This species of traverse occurred in the replication in actions of trespass, trespass on the case (including a species of assumpsit), and in the plea in bar in replevin, but was not used in any other stages of the pleadings.

All the advantages of this replication were obtained in every case by joining issue, as provided by the C. L. P. Act, 1852, s. 79, now replaced by R. S. C. 1883, Ord. XIX. r. 18.

Deis, or **Dais.** See DAGUS.

Dejeration [fr. *dejero*, Lat.], a taking of a solemn oath.

De jure [Lat.] (*by right*), opposed to *de facto*. The most striking instance of the recognition by our law of the distinction between things *de jure* and *de facto* is found in the statute-book, which entitles the first Act of Parliament passed in the reign of Charles the Second, as of the *twelfth* year of his reign, the previous years having been spent by him in exile, and the affairs of the kingdom having been conducted by the Protector. See DE FACTO.

De jure decimarum originem ducens de jure patronatûs tunc cognitio spectat ad legem civilem, i.e., *communem*. Godb. 63.—(With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law —that is, the common law.)

De jure judices, de facto juratores, respondent. (The judges answer to the law, the jury to the fact.)

A fundamental rule of the common law, upon which the whole system of pleading was built. 'It is of the greatest consequence,' said Lord Hardwicke, 'to the law of England, and also to the subject, that the power of the judge and jury be kept distinct; that the judge determine the law, and the jury the fact; if ever they come to be confounded, it will prove the confusion and destruction of the law of England.'

Delamere, Forest of. See 19 & 20 Vict. c. 13, and see 18 & 19 Vict c. 16.

De la plus Belle, Dower, where a wife was endowed with the fairest part of her husband's estate. Being a consequence of the tenure by knight's service, it is virtually abolished by the statute 12 Car. II. c. 24, which converts those tenures into socage.

Delator [Lat.], an accuser, an informer, a sycophant.

Delatura, an accusation, also the reward of an informer.

Del credere [a phrase borrowed from the Italians, equivalent to our word guaranty or warranty, or the Scotch term warrandice], an agreement by which a factor, when he sells goods on credit, for an additional commission (called a *del credere* commission), guarantees the solvency of the purchaser and his performance of the contract. Such a factor is called a *del credere* agent. He is a mere surety liable only to his principal in case the purchaser makes default.—*Story on Agency*, 28; *Smith's Merc. Law.*

Delectus personæ (*the choice of a person*). It is an established principle of the common law, that, as a partnership can commence only by the voluntary contract of the parties, so, when it is once formed, no third person can be afterwards introduced into the firm without the concurrence of all the partners who compose the original firm. It is not sufficient to constitute the new relation that one or more of the firm shall have assented to his introduction; for the dissent of a single partner will exclude him, since it would, in effect, otherwise amount to a right of one or more of the partners to change the nature, and terms, and obligations of the original contract, and to take away the *delectus personæ*, which is essential to the constitution of a partnership. So stubborn, indeed, is this rule, that even the executors and other personal representatives of a partner, do not, in that capacity, succeed to the state and condition of that partner. The Roman law is direct to the same purpose. It even pressed the rule to a still further extent, and held that a positive stipulation between the partners at the commencement of the partnership, that the heir or personal

representative of a partner should succeed him in the partnership, was inoperative and incapable of being enforced. The common law, however, treats such a stipulation as valid and obligatory. This also, according to Pothier, was the doctrine of the old French law; and the modern code of France has expressly adopted it, in opposition to the Roman law. Such also is the law of Scotland.

Delegata potestas non potest delegari. 2 Inst. 597.—(A delegated power cannot be delegated.)

Delegates, the High Court of, formerly the court of appeal from the Ecclesiastical and Admiralty Court. Abolished, upon the Judicial Committee of the Privy Council being constituted the court of appeal in such cases. See 2 & 3 Will. IV. c. 92; 3 & 4 Will. IV. c. 41; 6 & 7 Vict. c. 38.

Delegation, a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him.

Delegatus non potest delegare. (A delegate cannot delegate.)

The person to whom an office or a duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorized so to do.

Delf, a quarry or mine.—31 *Eliz.* c. 7.

Deliberandum est diu quod statuendum est semel. 12 Co. 74.—(That which is to be resolved once for all, should be long deliberated upon.)

Delicatus debitor est odiosus in lege. (A luxurious debtor is odious in law.) Consult 2 *Bulstr.* 148. Imprisonment for debt has now, however, been abolished, save only in certain exceptional cases, as to which see IMPRISONMENT FOR DEBT.

Delictum, challenge *propter.* See CHALLENGE.

Delinquens per iram provocatus puniri debet mitius. 3 Inst. 55.—(A delinquent provoked by anger ought to be punished more mildly.)

Deliverance, *second, writ of.* The judgment of *non pros.* in replevin at common law is, that the defendant shall have a return of the goods replevied, and his costs. The plaintiff, however, is not prevented by this judgment from proceeding, for he may sue out the judicial writ of second deliverance, in execution of which the sheriff must again take the goods from the defendant and deliver them to the plaintiff, or the writ will operate in the sheriff's hand as a *supersedeas* of the writ *de retorno habendo,* if the latter writ has not as yet been executed. The proceedings upon this writ are the same as in ordinary cases of replevin, and if the defendant have judgment either upon verdict, demurrer, or of *non pros.,* it is for a return irreplevisable, and he shall have a writ *de retorno habendo,* which being executed, the plaintiff cannot have any further writ of deliverance.—2 *Chit. Arch. Prac.*

Delivery of a deed, a requisite to a good deed. Deeds take precedence according to the time of their delivery, except in the register districts, where their precedence is according to their time of registration.

The delivery may be effected either by acts or by words, i.e., by doing something and saying nothing, as merely handing it to the grantee or his agent; or by doing nothing and saying something, as 'I deliver this writing as my act and deed,' or language of a similar import; or by doing and saying something.

Delivery is of two kinds:—

(*a*) *Absolute,* when the execution perfects the deed, and nothing is left to be done; or

(*b*) *Conditional,* which is the handing of the writing to some third person, to be delivered by him as the act and deed of the grantor, when certain specified conditions shall be performed. Until the conditions are performed the instrument is called an escrow, scrowl, or writing.

Delivery of deeds. Where a bill in equity, seeking a discovery of deeds and writings, prayed relief founded on the deeds or writings, of which the discovery was sought; if the relief so prayed were such as might be obtained at law (if the deeds or writings were in the custody of the plaintiff), he must have annexed to his bill an affidavit that they were not in his custody or power, and that he knew not where they were, unless they were in the hands of the defendant; otherwise the bill would have been demurrable.—*Story's Eq. Plead.* 375. See BILL IN CHANCERY.

Delivery, Writ of. See EXECUTION.

De lunatico inquirendo, *writ,* a process issued to inquire into the condition of a person's mind. Those Judges (see Jud. Act, 1873, s. 17; Jud. Act, 1875, s. 7) to whom, by special authority from the sovereign, the custody of idiots and lunatics is entrusted, may, upon petition or information, grant a commission in the nature of the writ *de lunatico inquirendo* (which is analogous to the obsolete *de idiotâ inquirendo*), to inquire into the party's state of mind. If the party be found *non compos,* the care of his person, with a suitable allowance for his maintenance, is usually committed to one of his relations or friends, then called his committee.

The practice in lunacy cases has been amended by the Lunacy Regulation Acts, 1853, 1855 and 1862; 16 & 17 Vict. c. 70; 18

Vict. c. 13; and 25 & 26 Vict. c. 86, repealed and re-enacted by the consolidating Lunacy Act 1891, 53 & 54 Vict. c. 5. See LUNATIC.

Dem. E.g. *Doe dem. Smith*, Doe, on the demise of Smith. See EJECTMENT.

Demand [fr. *demando*, fr. *mando*, Lat., *manudare*, to hand-give; *mander*, Fr., at bid], a claim, a challenging, the asking of anything with authority, a calling upon a person for anything due. It is either *in deed*, written or verbal, as a demand for rent, or an application for payment of a debt; or *in law*, as an entry on land, distraining for rent, bringing an action.

Demandant, he who is actor or plaintiff in a real action, because he demands lands.—*Co. Litt.* 127.

Demandress, a female demandant.

Demease, death.

De medietate linguæ (*of a moiety of tongue*), **Jury**. The 6 Geo. IV. c. 50, s. 47, enacted that, on the prayer of any alien indicted for felony or misdemeanour, the sheriff or other proper minister should, by command of the Court, return for one-half of the jury a competent number of aliens, if so many there were in the town or place where the trial was had; and if not, then so many aliens as should be found in the same town or place, if any; but by the 33 & 34 Vict. c. 14 (Naturalization Act), s. 5, an alien is no longer entitled to be tried by a jury *de medietate linguæ*.

Demeine, Demain, or **Demesne** [fr. *demaine*, Fr.], that part of the lands of a manor which the lord has not granted out in tenancy, but which is reserved for his own use and occupation.

De melioribus damnis, judgment. Where the jury, by mistake, severed the damages between several defendants in an action of trespass, the plaintiff might cure the defect by taking judgment *de melioribus damnis* against one, and entering a *nolle prosequi* as to the others.—1 *Chit. Arch. Prac.*, 12th ed.

Demesnial, pertaining to a demesne.

Demidietas, a half or moiety.

De minimus non curat lex. Cro. Eliz. 353. —The law cares not about very trifling matters.)

Demise, a grant by lease; it is applied to an estate either in fee or for term of life or years, but most commonly to the latter; it is used in writs for any estate.—2 *Inst.* 483.

The operative word 'demise' in a lease implies an absolute covenant on the part of the lessor, or person leasing, for the lessee's quiet enjoyment during the term, which, however, may be, and usually is, qualified by a more limited express covenant.

Also the death of the sovereign, *demissio regis vel coronæ*, an expression which signifies merely a transfer of property; for when we say the demise of the Crown, we mean only that in consequence of the disunion of the Sovereign's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual.—*Plowd.* 177. See 7 Wm. IV. and 1 Vict. c. 31, as to continuance of military commissions, and 30 & 31 Vict. c. 102, s. 51, as to continuance of Parliament on demise of the Crown.

Demise and **Redemise**, mutual leases of the same land, or something out of it. It is properly used upon the grant of a rent-charge, etc.

Demi-official, partly official or authorised.

Demi-vill, a town consisting of five freemen, or frank-pledges.—*Spelman.*

De molendino de novo erecto non jacet prohibitio. Cro. Jac. 429.—(A prohibition lies not against a newly-erected mill.)

Demonstrative legacy. A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money, with reference to a particular fund for payment. This kind of legacy is called by the civilians a demonstrative legacy, and it is so far general and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific that it will not be liable to abate with general legacies upon a deficiency of assets.—2 *Wms. Exors.*, 8th ed., 1165.

De morte hominis nulla est cunctatio longa. Co. Litt. 134.—(Concerning the death of a man no delay is long.)

Dempster, the Chief Judge of a Tinwald Court in the Isle of Man. See Scott's *Peveril of the Peak*, ch. v. See DEEMSTERS.

Demurrage, a term used in commercial navigation, signifying an allowance made to the owners of a ship by the freighter, for detaining her in port longer than the period agreed upon for her sailing. It is usually stipulated in charter-parties and bills of lading, that a certain number of days, called running or working or lay days, shall be allowed for receiving or discharging the cargo, and that the freighter may detain the vessel for a further specified time, or as long as he pleases, on payment of so much *per diem* for such overtime. When the contract of affreightment expressly stipulates that so many days shall be allowed for discharging or receiving the cargo, and so many more for overtime, such limitation is interpreted as an express stipulation on the part of the freighter that the vessel shall in no event be

detained longer, and that if detained he will be liable for demurrage. This holds even in cases where the delay is not occasioned by any fault on the freighter's part, but is inevitable. If, for example, a ship be detained, owing to the crowded state of the port, for a longer time than is allowed by the contract, demurrage is due; and it is no defence to an action for demurrage that it arose from port regulations, or even from the unlawful acts of the custom-house officers. Demurrage is not, however, claimable for a delay occasioned by the hostile detention of the ship, or the hostile occupation of the intended port; nor is it claimable for any delay wilfully occasioned by the master, or owners, or crew of the vessel. The claim for demurrage ceases as soon as the ship is cleared out and ready for sailing, though she should be detained by adverse winds or tempestuous weather.—*Maude & Pollock on Shipping, & Maclachlan on Shipping.*

Demurrer [fr. *demoror*, Lat.; or *demorrer*, Fr., to wait or stay], a pleading which admits the facts as stated in the pleading of the opponent, and referring the law arising thereon to the judgment of the Court, waits until by such judgment the Court decides whether he is bound to answer.

In civil matters this mode of pleading is abolished by R. S. C. 1883, Ord. XXV., Rule 1, but subsequent Rules of the same Order allow points of law raised on the pleading of any party to be disposed of before trial by order of the Court or a judge, and pleadings to be struck out if they disclose no reasonable cause of action.

In *criminal* prosecutions, a demurrer may be resorted to, when the fact as alleged is allowed to be true, but the defendant takes exception in point of law to the sufficiency of the indictment or information on the face of it, as if he insist that the fact as stated is no felony, treason, or whatever the crime is alleged to be. It is seldom resorted to.—*7 Geo. IV.* c. 64, ss. 20, 21; *14 & 15 Vict.* c. 100, s. 25; *4 Bl. Com.* 333.

Demy-sangue, half-blood.

Den, a valley.—*Blount.*

Den and Stroud, a liberty for ships or vessels to run or come ashore.—*Pla. tem. Ed. I.; Cowel.*

Dena terræ, a hollow place between two hills; a little portion of woody ground; a coppice.—*Cowel.*

Denariate, as much land as is worth one penny *per annum.*

Denarii, a sort of ready money.

Denarii de caritate, customary oblations made to a cathedral church at Pentecost.

Denarii S. Petri (commonly called Peter's pence), an annual payment on St. Peter's feast of a penny from every family to the Pope, during the time that the Roman Catholic religion was established in this kingdom.

Denarius, the chief silver coin among the Romans, worth 8*d.*; it was the seventh part of a Roman ounce; also an English penny. The denarius was first coined five years before the first Punic war, B.C. 269. In later times a copper coin was called denarius.—*Smith's Dict. Antiq.*

Denarius Dei, God's penny, or earnest given and received by parties to contract, etc., paid in former times to the church or poor.

Denarius tertius comitatûs, a third part or penny of the county paid to its earl, the other two parts being reserved to the Crown. —*Paroch. Antiq.* 418.

Denbara or **Denber** [fr. *den*, Sax., a vale, and *berg*, a barrow or hog], a pen for hogs; a swine-court.—*Cowel.*

Denelage [*Dane*], the laws which the Danes enacted whilst they had the dominion in England.

Denial. See TRAVERSE.

Denization, the act of enfranchising or making free.

Denizen [fr. *donaison, donison*, O. Fr., a gift], an alien born who has obtained, *ex donatione regis*, letters patent to make him (either permanently or for a time) an English subject. The granting of such letters patent is a branch of the Royal Prerogative, and is subject to no restrictions whatever. The denizen might hold lands by purchase or devise, which an alien might not, but could not take by inheritance before the Naturalisation Act, 1870; for his parent, through whom he must claim, being an alien, had no heritable blood, and therefore could convey none to his son. No denizen can be of the Privy Council, or either House of Parliament, or have any office of trust, civil or military.

An alien naturalised by certificate under the Naturalisation Act, 1870, is in much the same position as a denizen, but by s. 13 of that Act, nothing therein contained affects 'the grant of letters of denization by Her Majesty,' in the exercise of her prerogative. See further ALIEN and NATURALIZATION.

Denman's (Lord) Act (for the amendment of the law of evidence), 6 & 7 Vict. c. 85; which provides that no person offered as a witness shall thereafter be excluded by reason of incapacity from crime or interest from giving evidence.

Denman's (Mr.) Act (for amendment of procedure in criminal trials), 28 & 29 Vict. c. 18, allowing counsel to sum up the evidence in criminal as in civil trials, provided the prisoner be defended by counsel.

Denominatio fieri debet à dignioribus.—(Denomination should be deduced from the more worthy.)

De nomine proprio non est curandum cum in substantiâ non erretur; quia nomina mutabilia sunt, res autem immobiles. 6 Co. 66.—(As to the proper name, it is not to be regarded where it errs not in substance; because names are changeable, but things immutable.)

De non apparentibus, et non existendibus, eadem est ratio. 5 Rep. 6.—(As to things not apparent, and those not existing, the rule is the same.)

De non residentiâ clerici regis, an ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence.—2 *Inst.* 264.

De novo (*afresh; anew*).

De nullo, quod est suâ naturâ indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam. Co. Litt. 32.—(A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division; but let the heir satisfy her with an equivalent.)

Denshiring of land (otherwise called *burn-beating*), a method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost.—*Cowel.*

Dentist. The 21 & 22 Vict. c. 90, s. 48, enables Her Majesty, by charter, to grant to the Royal College of Surgeons of England power to institute examinations, etc., for dentists, and the Dentists Act, 1878, 41 & 42 Vict. c. 33, provides for the registration of dentists, imposes a penalty on unregistered persons using the title of dentist, and disables such persons from recovering fees.

Denumeration, the act of present payment. —*Scott.*

Deodand [fr. *deo dandum*, Lat.], a personal chattel which had been the immediate occasion of the death of any reasonable creature, was forfeited to the Crown, to be applied to pious uses, and distributed in alms by the high almoner; but the right to deodands had been for the most part granted out to the lords of manors or other liberties to the perversion of their original design. The law made the following extraordinary distinction, that no deodand was due where an infant under the age of discretion was killed by a fall from a cart, or horse, or the like, not being in motion, whereas if an adult person fell thence, and was killed, the thing was certainly forfeited. In all indictments for homicide, the instrument of death and the value were presented and found by the grand jury (as that the blow was given by a certain bludgeon, value 9*d.*), that the Crown or the grantee might claim the deodand; for it was no deodand unless it was presented as such by a jury of twelve men.—3 & 4 *Wm. IV.* c. 99; 1. *Bl. Com.* 300. It was abolished by 9 & 10 Vict. c. 62.

De odio et atiâ, an obsolete writ which commanded the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atiam,* for hatred and ill-will, with a view, if the latter were found to be the case, of afterwards issuing another writ to admit him to bail.—1 *Reeves,* 252.

De onerando pro ratâ portionis, an ancient writ, where a person was distrained for rent, which ought to be paid by others proportionably with him.—*F. N. B.* 234; *New Nat. Br.* 586.

Deer hedge, the hedge enclosing a deer park.

Departure [fr. *decessus,* Lat.], in pleading, when a party deserted the ground that he took in his last antecedent pleading, and resorted to another. It could never take place till the application, and it occurred more frequently in the rejoinder.

The rule against departure was evidently necessary to prevent the retardation of the issue. For while the parties were respectively confined to the grounds they first took, the process of pleading would exhaust, after a few alternations of statement, the whole facts involved in the cause, and thereby develop the question in dispute. But if a new ground were taken in any part of the series, a new state of facts being introduced, the result was consequently postponed. Besides, if one departure were allowed, the parties might, on the same principle, have shifted their ground as often as they pleased; and an almost indefinite length of altercation might, in some cases, have been the consequence.

By R. S. C. 1883, Ord. XIX., r. 16, it is ordered that 'no pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings, of the party pleading the same.'

Depeculation, a robbing of the prince or commonwealth; an embezzling of the public treasure.

Deponent [fr. *depono,* Lat., to lay down], a person who makes an affidavit; a witness; one who gives his testimony in court of justice. The person who made an affidavit used formerly to speak of himself throughout the affidavit as the deponent: 'this deponent saith,' etc.; but according to the more modern practice all affidavits must be made in the first person. See title DEPOSITION.

Depopulatio agrorum, destroying and ravaging a country.—3 *Inst.* 204.

Deportation, transportation; exile into a remote part of the kingdom, with prohibition to change the place of residence; exile, an abjuration, which is a deportation for ever into a foreign land, was anciently with us a civil death.—*Ayliffe.*

Depose, to lay down; to lodge; to degrade from a throne or high station; to affirm in a deposition.

Deposit, money paid to a person as an earnest or security for the performance of some contract, especially a contract for the sale of real estate. Also a naked bailment of goods to be kept for the bailor without recompense, and to be returned when the bailor shall require it. The appellation and the definition are both derived from the civil law, *Depositum est quod custodiendum alicui datum est.* It is, in the civil law, divisible into two kinds: (1) *necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called *miserabile depositum*; (2) *voluntary*, which arises from the mere consent and agreement of the parties. The common law has made no such division. There is another class of deposits, called *involuntary*, which may be without the assent or even knowledge of the depositor; as lumber, etc., left upon another's land by the subsidence of a flood.

The civilians again divide deposits into *simple deposits*, made by one or more persons having a common interest, and *sequestrations*, made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts, *conventional*, or such as are made by the mere agreement of the parties, without any judicial act; and *judicial*, or such as are made by order of a Court in the course of some proceeding.

There is another class of deposits called *irregular*, as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. There is also a *quasi* deposit, as where a person comes lawfully to the possession of another person's property by finding it; and a *special* deposit of money, or bills in a bank, where the specific money, the very silver or gold coin, or bills deposited, are to be restored, and not an equivalent.—*Story on Bailments*, tit. '*On Deposits*,' chap. ii.

A deposit of title-deeds as a security for the repayment of a borrowed sum of money, constitutes an equitable mortgage. See EQUITABLE MORTGAGE.

Deposit account, an account of sums lodged with a bank not to be drawn upon by cheques, and usually not to be withdrawn except after a fixed notice.

Deposit of wills of living persons at the offices of the Court of Probate. See Probate Court Act, 1857, s. 91.

Depositary, one with whom anything is lodged in trust, as 'depository' is the place where it is put. The obligation on the part of the depositary is, that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

Deposition, depriving of a dignity, etc.

2. The act of giving public testimony; technically, the evidence put down in writing by way of answer to questions. It is an incontrovertible rule at common law, that when the witness himself may be produced, his deposition cannot be read, for it is not the best evidence. But it may be read not only where it appears that the witness is actually dead, but in all cases where he is dead for all purposes of evidence: as where diligent search has been made for the witness and he cannot be found; where he resides in a place beyond the jurisdiction of the Court; or where he has become lunatic. See now, however, R. S. C. 1883, Ord. XXXVII., rr. 1, 5; and EVIDENCE; PERPETUATE TESTIMONY, BILLS TO.

As to deposition in criminal proceedings (in connection with which the term is most commonly used), see especially 11 & 12 Vict. c. 42, s. 17, and 30 & 31 Vict. c. 35, ss. 6, 7. Under the first of these acts, the evidence upon which a prisoner is committed for trial by justices of the peace is taken down, and may be read at the trial upon it being proved that the witness is dead or unable to travel, and that the prisoner or his counsel or solicitor had a full opportunity of cross-examining the witness. Under the second, the testimony of any person dangerously ill may be taken down by a justice of the peace at any time before trial, and read at the trial upon it being proved that the witness is dead or that he will never be able to travel or give evidence, and that there was a like opportunity of cross-examination.

Depositor, one who makes a deposit.

De prærogativâ regis, the statute 17 Edw. II. st. 1, which enacts, in affirmance of the common law, that the King shall have ward of the lands of natural fools, taking the profits, without waste or destruction, and shall find then necessaries; and after the

death of such idiots, he shall render the estate to the heirs. This was in order to prevent such idiots from aliening their lands, and their heirs from being disinherited. The Act as not repealed by the consolidating Lunacy Act, 1890.

Deprivation, taking away from a clegyman his patronage, vicarage, or other spiritual promotion or dignity, either, first, by sentence declaratory in the proper court for fit and sufficient causes; such as attainder for treason or felony (now obsolete), or conviction of other infamous crime; for heresy, infidelity, gross immorality, and the like, or for farming or trading contrary to law, after two former convictions for the same offence; or, secondly, in pursuance of divers penal statutes, which declare the benefice void, for some nonfeasance or neglect, or else some malfeasance or crime, as for simony; for maintaining any doctrines in derogation of the sovereign's supremacy, or of the Thirty-nine Articles, or of the Book of Common Prayer; for neglecting to read the liturgy and articles in the church, and to declare assent to the same within two months after induction; or for using any other form of prayer than the liturgy of the Church of England; or for continued neglect, after order of the bishop followed by sequestration, to reside on the benefice; in which cases the benefice is *ipso facto* void, without any formal sentence of deprivation.—2 *Steph. Com.*

Deputy [fr. *député*, Fr.], one who governs and acts instead of another, or who exercises an office, etc., in another man's right.

By the Sheriffs Act, 1887 (see SHERIFF), every sheriff is directed to appoint a sufficient deputy having an office within a mile of the Inner Temple Hall, for the receipt of writs, etc.

Judges of the Supreme Court cannot act by deputy; but County Court Judges can under s. 18 of the County Court Act, 1888, in case of illness or unavoidable absence; and the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 166, enables recorders to appoint deputies in similar cases.

As to appointment of deputy to recorder, stipendiary magistrate, or clerk of the peace, in case of inability of recorder, etc., himself to appoint see 51 & 52 Vict. c. 23. A deputy cannot make a deputy.—9 *Rep.* 49.

Deputy Lieutenant, the deputy of a lord lieutenant of a county. Each lord lieutenant has several deputies.

Deputy Steward, a steward of a manor may depute or authorise another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under steward or deputy may authorise another as sub-deputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*.

This deputy or under-steward may be appointed either in writing or by parol, although the appointment of the chief steward should not contain an express authority for that purpose.

De quibus sur disseisin, a writ of entry now abolished.

Der [fr. *dar*, Brit.], water.

Deraign, or **Dereyn** [fr. *derationare*, Lat.; *deraigner*, or *deragner*, Fr.], to confound, to displace, also to prove.—*Glanv.* 1, 2, c. iii. Also to justify, or refuse to clear one from an accusation.

De rationabili bonorum parte, a writ, anciently given to the wife and children of a man, to recover their reasonable parts of his goods, which he could not bequeath away from them; a custom now utterly abolished, for a man has a full power of disposition over his goods and chattels.

Derelict, a vessel forsaken at sea.

Derelict lands, those suddenly left by the sea, as when the sea shrinks back below the usual water-mark. This use of the word is analogous to the last title.

Derivativa potestas non potest esse major primitivâ. Noy; Wing, 66.—(The derivative power cannot be greater than the primitive.)

Derivative conveyances, secondary deeds, which presuppose some other conveyance primary or precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. See DEED.

Derogation, the act of weakening or restraining a former law or contract.

Derogatory-clause in a person's will, a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void, as tending to make the will irrevocable.

Descender, writ of formedon in, an abolished process.—*F. N. B.* 21; 1 *Steph. Com.*

Descent, one of the two chief methods of acquiring an estate in lands. It is the hereditary succession of property vested in a person by the operation of law, i.e., by his right of representation as heir-at-law. It is defined in the interpretation clause of the

3 & 4 Wm. IV. c. 106, as 'the title to inherit lands by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue.' See CANONS OF INHERITANCE.

Descent cast, the devolving of realty upon the heir on the death of his ancestor intestate. It does not take away or defeat a right of entry or action after 31st December, 1883. —3 & 4 *Wm. IV.* c. 27.

Deserted premises. Landlords are enabled to recover possession of such premises by 11 Geo. II. c. 19, s. 16; 57 Geo. III. c. 52; 3 & 4 Vict. c. 84, s. 13; and 11 & 12 Vict. c. 43, ss. 33—4. See further title EJECTMENT.

Desertion, the criminal offence of abandoning the naval or military service without license. See s. 12 *et seq.* of the Army Act, 1881, replacing similar sections of the annual *Mutiny Acts*, and *Reg.* v. *Cuming*, 19 Q. B. D. 13.

Also (2) an abandonment of a wife, a matrimonial offence, for which the remedy is under the 20 & 21 Vict. c. 85, s. 16, by which a sentence of judicial separation may be obtained either by the husband or wife on the ground of desertion, without cause, for two years and upwards; and see s. 21 as to orders for the protection of the property of wives deserted by their husbands; and the Married Women (Maintenance in case of Desertion) Act, 1886, 49 & 50 Vict. c. 52, under which a deserted wife may obtain an order from justices of the peace that the husband pay her such weekly sum, not exceeding 2*l.*, as the justices consider to be in accordance with his means and hers.)

Designatio justiciariorum est à rege; jurisdictio vero ordinaria à lege. 4 Inst. 74.—(The appointment of justices is by the King, but their ordinary jurisdiction by the law.)

Designatio personæ, the description of a person or a party to a deed or contract.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. Co. Litt. 210.—(The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease.)

Designs, Copyright in. These productions of genius, whether ornamental or useful, are protected by statute.

De similibus ad similia eâdem ratione procedendum est.—(From like to like we are to proceed by the same rule.)

De similibus idem est judicium. 7 Co. 18. —(In like cases the judgment is the same.)

De son tort (*of his own wrong*), *executor*, a stranger who takes upon himself to act as executor. See EXECUTOR DE SON TORT.

Despacheurs, persons appointed to settle cases of average.

Desperate debt, a hopeless debt; an irrecoverable obligation.

Despitus, a contemptible person.

Desponsation, the act of betrothing persons to each other.

Despot [fr. δεσπότης, Gk., a governor, a ruler], an absolute prince: one who governs with unlimited authority. Despot is at present a title of quality given to the princes of Wallachia, Servia, and some of the neighbouring countries.—*Encyc. Lond.*

Despotism, absolute power.

Desrenable [Fr.], unreasonable.

Destructive insects. See COLORADO BEETLE.

Desuetude, disuse.

Detachiare, to seize or to take into custody another person's goods, etc., by attachment or other process of law.—*Cowel.*

Detainer, *forcible.* See FORCIBLE ENTRY.

Detainer, *unlawful.* The wrongful keeping of a person's goods, although the original taking may have been lawful. As if I distrain another's cattle, *damage feasant*, and before they are impounded he tenders me sufficient amends; now, though the original taking was lawful, my subsequent detention of them, after tender of amends, is not lawful, and he shall have an action of replevin against me to recover them, in which he shall recover damages for the *detention*, and not for the *caption*, because the original taking was lawful.—3 *Steph. Com.*

Detainer, *writ of*, one of the five forms of process prescribed by the 2 Wm. IV. c. 39 s. 1, for the commencement of a personal action against a person already in the prison of one of the courts. Superseded by 1 & 2 Vict. c. 110, ss. 1, 2.

A process lodged with the sheriff against a person in his custody was called a detainer; the officer, therefore, always searched the sheriff's office to see if there were any detainers lodged there against a person in his custody, before he discharged him.

De tallagio non concedendo, 34 Edw. I. st. 4. See 2 *Reeves*, 104.

Determinable freeholds, estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens—when the widow marries, or when the grantee obtains the benefice—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen.—2 *Bl. Com.* 121.

Detinet (*he detains*), an action of debt, which lay for the specific recovery of goods, under a contract to deliver them.—1 *Reeves*, 159. No longer a technical expression.

Detinue, a personal action at law founded on tort (*Bryant* v. *Herbert*, 3 *C. P. D.* 389). It might be maintained by one who had either an absolute or a special property in goods against another, who was in actual possession, and refused to re-deliver them. The plaintiff sought to recover the goods *in specie*, or on failure thereof the value, and also damages for the detention. The grounds of the action are: (1) a property in the plaintiff, either absolute or special (at the time of action brought) in personal goods, which are capable of being ascertained; (2) a possession in the defendant by bailment, finding, etc.; (3) an unjust detention on the part of the defendant. As to the actual recovery of a chattel detained, see R. S. C. 1883, Ord. XLVIII., taken from C. L. P. Act, 1852, s. 78, by which a writ of delivery may be issued ordering the sheriff to distrain upon the defendant's goods till he deliver the chattel; and of goods sold, see 19 & 20 Vict. c. 97, s. 2.

Detinuit (*he detained*).

Detractari, to be torn in pieces by horses. —*Fleta*, l. 1, c. xxxvii.

Detunicari, to discover or lay open to the world.—*Matt. Westm.* 1240.

Deus solus hæredem facere potest, non homo. Co. Litt. 7.—(God alone, and not man, can make an heir.)

Deuterogamy [fr. δεύτερος, Gk., second, and γάμος, marriage], a second marriage.

Devadiatus, or **Divadiatus**, an offender without sureties or pledges.—*Cowel.*

Devastavit (*he has wasted*), a devastation or waste of the property of a deceased person, by an executor or administrator by extravagance or misapplication of the assets, for which he is liable.

Devenerunt, an obsolete writ, heretofore directed to the escheator on the death of the heir of the king's tenant, under age and in custody, commanding the escheator that, by the oaths of good and lawful men, he inquire what lands and tenements, by the death of the tenant, came to the king.—*Dyer*, 860.

De ventre inspiciendo, writ, an original process which issued out of Chancery on petition, for the security of the next heir (i.e., *verus*, not *hæres apparens*), or on behalf of a tenant-in-tail, or *hæres factus* as a devisee in fee, in tail, or for life, to guard them against supposititious births. Obsolete.

Devest, or **Divest** [fr. *de* and *vestis*, Lat.], to deprive, to take away; opposite to *invest*, which is to deliver possession of anything to another.

Devil on the neck, an instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back.—*Cowel.*

Devisavit vel non, an issue sent from the Court of Chancery to a court of law, to try the validity of a paper asserted to be a will disposing of real estate, to ascertain whether or not the testator did devise, or whether or not the paper was his will. Obsolete.

Devise [fr. *deviser*, Fr., to sort into parcels], a gift, etc., by a last will and testament. The giver is called the *deviso*, the person to whom it is given the *devisee*. This word is properly only applied to real property, but, in wills, it transmits personal property as well as the word bequeath—the proper term; and *vice versâ*.

Devoire [Law Fr.], a duty; a tax of custom.—34 *Edw. III.* c. 18.

Devonshiring. See DENSHIRING.

Dewan, Duam, place of assembly; native minister of the revenue department; and chief justice in civil causes, within his jurisdiction; receiver-general of a province. This term is also used to designate the principal revenue servant under an European collector, and even of a Zemindar. By this title the East India Company were receivers-general of the revenues of Bengal under a grant from the Great Mogul.—*Indian.*

Dewanny Adawlut, a court for trying revenue and other civil cases.—*Indian.* The 'Sudder Dewanny Adawlut' (corrupted from *Sadr-Divani-Adalat*) is the Court of Final Decision for each Presidency in India, from which there is an appeal to the Judicial Committee of the Privy Council in England.

Dewanny, Duannee, the office or jurisdiction of a Dewan.

Dextrarius, one at the right hand of another.

Dextras dare, to shake hands in token of friendship; or to give up oneself to the power of another person.—*Wals.* 332.

Diaconate, the office of a deacon.

Diagnosis (*Med.*), the discovery of the source of a patient's illness.

Dialectis, that branch of logic which teaches the rules and modes of reasoning.

Diallage [fr. διαλλαγή, Gk., interchange], a rhetorical figure in which arguments are placed in various points of view, and then turned to one point. *Encyc. Lond.*

Dialogus de Scaccario. This has generally passed as the work of Gervase of Tilbury; but Mr. Madox thinks it was written by Richard Fitz-Nigel, Bishop of London, who

succeeded his father in the office of treasurer, in the reign of Richard I., and was therefore qualified for such an undertaking. This book treats, in the way of dialogue, of the whole establishment of the exchequer, as a court and an office of revenue; giving an exact and satisfactory account of the officers and their duties, with all matters concerning that court, during its highest grandeur, in the reign of Henry II. This is done in a style somewhat superior to the Law-Latinity of those days.—1 *Reeves*, 220.

Dianatic, a logical reasoning in a progressive manner, proceeding from one subject to another.—*Encyc. Lond.*

Diarium, daily food, or as much as will suffice for the day.—*Du Cange.*

Dica [fr. δεκα, Gk., ten], a tally for accounts.

Dicast [fr. δικαστής, Gk.], an officer in ancient Greece answering nearly to a juryman.

Dice, all games played with dice, except backgammon, are unlawful by 13 Geo. II. c. 19, s, 9.

Dictores, arbitrators.

Dictum, an arbitrament; an award.

Diem clausit extremum, a special writ of extent (see EXTENT), issued in the event of the death of a crown debtor. By this writ the sheriff is commanded to inquire by a jury when and where the crown debtor died, and what chattels, debts, and lands he had at the time of his decease, and to take and seize them into the crown's hands.

Dies amoris (*the day of love*), the appearance day of the Term on the fourth day, or *quarto die post.* It was the day given by the favour and indulgence of the Court to the defendant for his appearance, when all parties appeared in court, and had their appearance recorded by the proper officer.

Dies cedit, the day begins; *dies venit*, the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one.—*Sand. Just.*, 7th ed., 227, 235; and see *Ulpian*, *D. L.* 16, 213.

Dies datus, the day of respite given to a defendant.

Dies dominicus non est juridicus. Co. Litt. 35.—(A dominical day, i.e., a Sunday, is not a court day.) See SUNDAY.

Dies fasti, nefasti, et intercisi (*business days, holidays, and half-holidays*).

For the purpose of the administration of justice all days were divided by the Romans into *fasti* and *nefasti*. *Dies fasti* were the days on which the prætor was allowed to administer justice in the public courts; they derived their name from *fari* (*fari tria verba, do, dico, addico*, Ovid, *Fast* i. 45, etc.; Varro, *De Ling. Lat.* vi. 29, 30, edit. Müller; Macrob. *Sat.* i. 16). On some of the *dies fasti* comitia could be held, but not on all.—Cic. *pro Sect.* 15, with the note of Manutius.

Dies nefasti were days on which neither courts of justice nor comitio were allowed to be held, and which were dedicated to other purposes. According to the ancient legends, they were said to have been fixed by Numa Pompilius, Liv. i. 19. One part of a day might be *fastus*, while another was *nefastus.* —*Ovid*, Fast. i. 50.

Dies inceptus pro completo habetur.—(A day begun is held as complete.)

Dies incertus pro conditione habetur.—(An uncertain day is held as a condition.)

Dies juridicus, a court-day.

Dies marchiæ, the day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

Dies non juridicus, not a court-day.

Diet [fr. *dies*, Lat., an appointed day, *Skinner;* or *diet*, an old German word, meaning a multitude, *Junius*], a deliberative assembly of princes or estates.

II.—Food. The statute of Nottingham, 10 Edw. III. s. 3, relating to excess in diet (*de cibariis utendis*) was repealed by 19 & 20 Vict. c. 64.

Dieta, a day's journey; a day's work.

Dieu et mon droit (*God and my right*), the motto of the royal arms, first assumed by Richard I.

Dieu et son acte (*the visitation of God*), words often used in our law. It is a maxim that the act of God, or inevitable accident, shall prejudice no man, *actus Dei nemini facit injuriam*,

Diffacere, to destroy.

Difficile est ut unus homo vicem duorum sustineat. 4 Co. 118.—(It is difficult that one man should sustain the place of two.)

Difforciare rectum (*to take away or deny justice*).

Digamia, or **Digamy** [fr. διγαμία, Gk.], second marriage; marriage to a second wife after the death of the first; as *bigamy* in law is having two wives at once.

Digest, generally a compilation or distribution of a subject into various classes or departments; particularly the Pandects of Justinian in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method. (See PANDECTS). Also an arrangement of the results (usually transcribed from the marginal or head notes of the reporters) of the decisions of the Courts upon litigated points

of law, as Fisher's Common Law Digest, Mews' Annual Digest, the Law Reports Digest, the Law Journal Quinquennial Digest, etc.

Dignitary [fr. *dignus*, Lat., worthy], a clergyman advanced to be a bishop, dean, archdeacon, prebendary, etc. But there are prebendaries without cure or jurisdiction, who are not dignitaries. 3 *Inst.* 155.

Dignities, a species of incorporeal hereditament, in which a man may have a property or estate. They were originally annexed to the possession of certain estates in land, and created by a grant of those estates; or, at all events, that was the most usual course. And although they are become little more than personal distinctions, they are still classed under the head of real property; and as having relation to land, in theory at least, may be entailed by the crown, within the Statute *de Donis*; or limited in remainder, to commence after the determination of a preceding estate-tail in the same dignity. See PEOPLE; PRECEDENCE.

Dijudication, judicial distinction.

Dilapidation, decay; a kind of ecclesiastical waste, either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage house, and other buildings thereunto belonging to decay. An action for dilapidations lies, either in the spiritual court by the canon law, or in the courts of common law, and it may be brought by the successor against the predecessor if living, or if dead, then against his executors; and against an alienee, if it were made over to him to defeat the remedy for dilapidations.—13 *Eliz.* c. 10; 5 & 6 *Vict.* c. 108, s. 19. See the Ecclesiastical Dilapidations Act, 1871 & 1872 (34 & 35 Vict. c. 43, and 35 & 36 Vict. c. 96).

The term is also used to signify that disrepair for which a tenant is usually liable to a landlord at the end of a tenancy under an express agreement to yield up the demised premises in good repair.

Dilationes in lege sunt odiosæ. (Delays in law are hateful.)

Dilatory pleas, a class of defence founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the *jurisdiction*, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the Court, or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. These pleas must have been verified by affidavit or otherwise, and pleaded within four days from delivery of declaration.—4 *Anne* c. 16. Pleas in Abatement are now abolished. See ABATEMENT.

Diligence, care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence:—(1) Common or ordinary, which men in general exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns.

The Civil Law is in perfect conformity with the Common Law. It lays down three degrees of diligence, ordinary (*diligentia*), extraordinary (*exactissima diligentia*), slight (*levissima diligentia*).—*Story on Bailments*, 19. In Scotch law, the term 'diligence' signifies execution. See NEGLIGENCE.

Diligiatus [fr. *de lege ejectus*, Lat.], outlawed.

Dilligrout, pottage formerly made for the king's table on the coronation day. There was a tenure in serjeantry, by which lands were held of the king by the service of finding this pottage at that solemnity.—39 *Hen. III.*

Dimetæ, the ancient Latin name of the people who inhabited Carmarthenshire, Pembrokeshire, and Cardiganshire.

Dimidietas, the moiety or half of a thing.

Diminution, the act of making less, opposed to *augmentation*. In proceedings for reversal of judgment, if the whole record be not certified, or not truly certified by the inferior court, the party injured thereby, in both civil and criminal cases, may allege a diminution of the record, and cause it to be rectified.

Dimissory letters. Where a candidate for holy orders has a title in one diocese, and is to be ordained in another, the proper diocesan sends his letter dimissory directed to some other ordained bishop, giving leave that the bearer may be ordained, and have such a cure within his district.—*Cowel.*

Dinarchy [fr. δίς, Gk., and ἀρχή, dominion], a government of two persons.

Diocesan, belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

Diocesan courts, the consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction: deciding all

matters of spiritual discipline—suspending or depriving clergymen—and administering the other branches of the ecclesiastical law.—2 *Steph. Com.*

Diocese, or **Diocess** [fr. *diocese*, Fr.; *diocesi*, Ital. and Span.; διοίκησις, fr. διοικέω, to govern, Gk.; *diœcesis*, Lat.], the circuit of every bishop's jurisdiction; it is divided into archdeaconries, each archdeaconry into rural deaneries, and rural deaneries into parishes. —*Co. Litt.* 94. The 37 & 38 Vict. c. 63, was passed for facilitating the re-arrangement of the boundaries of archdeaconries and rural deaneries.

Dioichia, the district over which a bishop exercised his spiritual functions.

Diploma [fr. διπλόω, Gk., to fold double, consisting of two leaves], a royal charter or prince's letters patent. An instrument given by colleges and societies, on commencement of any degrees. A license for a clergyman to exercise the ministerial function, or a physician, etc., to practise his art.

Diplomacy, the conducting of negotiations between nations by means of ambassadors, envoys, and the like, or by correspondence. Persons holding diplomatic pensions under 2 & 3 Wm. IV. c. 116, may be elected members of the House of Commons.—22 & 23 *Vict.* c. 5. The Act 32 & 33 Vict. c. 43, provides for the payment of diplomatic salaries, allowances, and pensions.

Diplomatics (should not be confounded with *diplomacy*), the art of judging of ancient charters, public documents, or diplomas, etc., and discriminating the true from the false.

Direct, an epithet for the line of ascendants and descendants in genealogical succession, opposed to *collateral*. Collateral relationship, is relationship through another branch, as cousins, etc.

Direct (*v.a.*), of a judge, to give the rule of law to a jury. See Jud. Act, 1875, s. 22.

Direct evidence, opposed to circumstantial evidence. See that title.

Direction (*n.s.*), the rule of law in a case given to a jury. See DIRECT.

Directions, Summons for, one general summons with respect to pleadings, discovery, and other matters previous to trial, first authorized by R. S. C. 1883, Ord. XXX., for the purpose of saving the expense of many successive summonses, and of enabling the Court, through the particular master to whom each action is assigned, to obtain control over the action at an early stage.

Directors, persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. Their powers, if their company be incorporated by Act of Parliament, are derived from their special acts and ss. 90—100 of the Companies Clauses Act, 1845; if their company be incorporated under the Companies Act, 1862, by 'articles of association,' as to which see s. 14 and Table A of that act. They may receive a salary, but they make no personal profit from their company, being trustees; but they are under no personal liability except for fraud, as to which see 24 & 25 Vict. c. 96, s. 81 *et seq.*

The Directors' Liability Act, 1890, 53 & 54 Vict. c. 64, passed in consequence of the decision of the House of Lords in *Peek* v. *Derry*, 14 *App. Cas.* 337, that Directors making an untrue statement in a prospectus which they honestly, though without reasonable ground, believed to be true, were not liable to a shareholder taking shares on the faith of such prospectus, reverses the law as so laid down, and enacts that Directors 'shall be liable to pay compensation' to all persons who shall subscribe for any shares, etc., on the faith of a prospectus inviting subscriptions, for loss sustained by reason of any untrue statement in the prospectus, unless the directors had reasonable ground to believe that the statement was untrue. There are qualifications to meet the case of statements made on the authority of 'experts' or official documents. By s. 5 any Director becoming liable to pay damages under the Act is entitled to contribution from his co-directors, thus forming an exception to the rule of *Merryweather* v. *Nixan*, 8 *T. R.* 186, that there is no right of contribution amongst tort feasors.

Directory statute. The term *directory*, when applied to a statute (or part of a statute) which enjoins or forbids the doing of certain acts, is used in two different senses:—

(I.) As opposed to *declaratory*, i.e., a statute which merely declares what the common law is.—1 *Bl. Com.* 54 & 86.

(II.) As opposed to *imperative*. When a statute directs that an act should be done in a specific manner, or authorises it upon certain conditions, if a strict compliance with its provisions is not essential to the validity of the act, it is said to be *directory*, although the performance might be enforced by mandamus, but if such compliance is essential, it is said to be imperative. See *per* Lord Mansfield, in *R.* v. *Loxdale*, 1 *Burr.* 477; *Maxwell on Statutes*, 2nd ed., 450—470.

Diriment impediments, absolute bars to marriage, which would make it null *ab initio*.

Disability, incapacity to do any legal act. It is divided into two classes: (1) *absolute*, which, while it continues, wholly disables the person; such were outlawry, excommunica-

tion, attainder (but see the 32 & 33 Vict. c. 23, s. 1, abolishing attainder on conviction for treason or felony); (2) *partial*, as infancy, coverture, lunacy, and drunkenness. As to which see the various titles relating thereto. The compulsory purchase, by railway and other companies, of the lands of parties under disability is regulated by the Lands Clauses Acts.

Disabling statutes, Acts of Parliament, restraining and regulating the exercise of a right or the power of alienation; the term is specially applied to 1 Eliz. c. 19, and similar acts, restraining the power of ecclesiastical corporations to make leases.

Disadvocare, to deny a thing.

Disafforest, to throw open; to reduce from the privileges of a forest to the state of common ground.

Disagreement, the refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will, consequently no one can become a grantee, etc., without his *agreement*: the law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative. If an infant purchase an estate he may, on coming to full age, disagree thereto; and if he do not agree thereto, his heirs, after his death, may waive it. If a person of unsound mind purchase an estate, he cannot afterwards disagree thereto himself; but if he does not recover, or after recovery dies without agreement, his heir may disagree to it. If a *femme covert* purchase an estate, her husband may disagree thereto; and if he neither agrees nor disagrees, the purchase is good during the coverture, but after his death, notwithstanding his agreement, the wife may disagree thereto, and so after her death may her heirs, if she does not herself agree thereto. Persons who purchase an estate under duress may disagree thereto when the duress ceases.—See *Co. Litt.* 2 *b.* 3 *a*, 380 *b*; 3 *Preston's Abstracts*, 104; *Vin. Abr.* 'Disagreement.'

Disalt, to disable a person.—*Litt.*

Disappropriation. See APPROPRIATION.

Disbarring, expelling a barrister from the bar, a power vested in the benches of each of the four Inns of Court, subject to an appeal to the judges.

Disboscatio, a turning wooded ground into arable or pasture.

Discarcare, to unlade a ship.—*Cowel.*

Disceit. See DECEIT.

Discent. See DESCENT.

Discharge (*v. a.*), to relieve of a duty. A sheriff is said to be discharged of his prisoner; a prisoner discharged from custody; a jury discharged from the cause. See next title.

Discharge (*v. a.*), a rule *nisi* is discharged when the Court decides that it shall not be made absolute, i.e., that the party who obtained the rule *nisi* shall take nothing, and the suit remain *in statu quo*. See RULE.

Discharge of a jury, takes place (1) either by the act of God, as the death of one of the jury; or (2) in due course on the termination of the trial by verdict (or sentence); or by the discretion of the judge determining that they are so exhausted as to be incapable of continuing their deliberations, or so divided as to be unable ever to agree, or that there is other sufficient cause. After such discharge there may be a further trial by another jury. See *R.* v. *Winsor*, *L. R.* 1 *Q. B.* 289, 390.

Discharge, Order of. See ORDER OF DISCHARGE.

Discharged Prisoners Aid Act, 25 & 26 Vict. c. 44, amended by 28 & 29 Vict. c. 126, ss. 41—3, 73.

Disclaimer, a renunciation, or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe. See *Vivian* v. *Moat*, 16 *Ch. D.* 730.

A devisee in fee may, by deed, without matter of record, disclaim the estate devised, and after such disclaimer has no interest in the estate.

An executor may, before probate, 'disclaim,' or as it is more commonly called, 'renounce' the executorship, and the executor of an executor may, before probate of the will of his own testator, disclaim to be the executor of the first testator, but he cannot so disclaim after he has proved the will of his own testator; for he thereby becomes his complete executor, and consequently the executor of the first testator.

A trustee who has not accepted may disclaim, but a conveyance by him of the trust-estate to a co-trustee would amount to an acceptance of the trusts. An estate of freehold may be disclaimed as well by deed as by matter of record, and even by conduct; but a deed is the best evidence of disclaimer. —1 *Sanders' Uses*, 426; 2 *Hayes's Introd.* 72. The word '*disclaim*' is introduced in the 3 & 4 Wm. IV. c. 47, s. 77, to obviate a question whether a married woman may disclaim.—7 *Cru. Dig. App.* 12.

A trustee in bankruptcy may disclaim an onerous lease or contract under s. 55 of the Bankruptcy Act, 1883, replacing, with material amendments, s. 23 of the Bankruptcy Act, 1869.

Disclaimer was also a mode of defence in

equity where the defendant renounced all claim to the subject of the demand made by the plaintiff's bill.

As to disclaimer of patent, see Patent Act, 1883, s. 19.

Disclosure. Every solicitor whose name is on a writ must, on demand in writing by the defendant, declare whether the writ was issued with his privity. R. S. C. 1883, Ord. VII., r. 1.

When a writ is sued out by partners in the name of their firm, they or their solicitor may be compelled to disclose the names and residences of the various partners (*Ibid.*, r. 2).

Discontinuance, an interruption or breaking off. This happened when he who had an estate-tail made a larger estate of the land than by law he was entitled to do; in which case the estate was good, so far as his power extended to make it, but no further.—*Finch L.* 190; 1 *Rep.* 44. The learning relative to discontinuances has now become of no account, as far as future transactions are concerned, not merely in consequence of the abolition of fines, but by the effect of the 3 & 4 Wm. IV. c. 27, which provides (s. 39) that no discontinuance shall thereafter avail to take away the right of entry.

Discontinuance in an action in the Supreme Court is governed by R. S. C. 1883, Ord. XXVI.

Discontinuare nihil aliud significat quam intermittere desuescere interrumpere. Co. Litt. 325.—(To discontinue signifies nothing else than to intermit, to disuse, to interrupt.)

Discount [fr. *dis* and *conté*, Fr.], abatement; a sum of money deducted from a debt in consideration of its payment before the stipulated time.

Discovert, a widow; a woman unmarried; one not within the bonds of matrimony.

Discovery, revealing or disclosing a matter. The Courts of Common Law were originally unable to compel a litigant to disclose any fact resting merely within his knowledge, or discover any document in his power, which would aid in the enforcement of a right, the repelling of an unjust demand, or the redress of a wrong; an infirmity which the equity judges cured, by compelling such a party to disclose the fact, or discover the document, upon his oath, in his answer to a bill of complaint, filed by the opposite party, called a bill of discovery, which was an original bill.

The late V. C. Wigram, in his work, entitled '*Points in the Law of Discovery*,' epitomised the two cardinal principles on this subject in the two following propositions:

(1) It is the right, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact which, being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not by his form of pleading admit.

(2) The right of a plaintiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the '*plaintiff's case*,' and does not extend to a discovery of the manner in which the '*defendant's case*' is to be exclusively established, or to evidence which relates exclusively to his case.

As to the grounds on which discovery might be obtained by bill in equity, see further *Daniel Ch. Pr.* 5th ed., 1408.

The Common Law Courts obtained a power of discovery by Statutes 14 & 15 Vict. c. 99, s. 6, and C. L. P. Act, 1854, 17 & 18 Vict. c. 125, s. 50.

By R. S. C. 1883, Ord. XXXI., it is provided that any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action (r. 12). The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, must specify which, if any, of the documents therein mentioned he objects to produce (r. 13). Any party failing to comply with an order for discovery is liable to attachment, and dismissal of his action or striking out of his defence (r. 21). In order to check needless expense, it is also provided that the party seeking discovery must first secure the costs of it by a payment into Court of 5*l.*, this sum to be repaid to the depositor if the costs of the action should be adjudged to him, and if not to be subject to a lien for the costs of the other party (ss. 25, 26). See further the titles INTERROGATORIES and INSPECTION; and consult *Bray on Discovery*.

Discredit (*v. a.*), to show to be unworthy of credit. See HOSTILE WITNESS. As to discrediting a witness, see C. L. P. Act, 1854, ss. 22—25, and (as to criminal cases) 28 & 29 Vict. c. 18, s. 3.

Discretio est scire per legem quid sit justum. 10 Co. 140.—(Discretion is to know through law what is just.)

Discretion (judicial). See JUDICIAL DISCRETION.

Discussion. By the Roman law sureties were not primarily liable to pay the debt for which they became bound as sureties; but were liable only after the creditor had sought payment from the principal debtor, and he had failed to pay. This was called the

benefit or right of discussion. Under those systems of jurisprudence which adopt the Roman law, and under the present law of France, the rule is similar; and the obligation contracted by the surety with the creditor is, that the latter shall not proceed against him until he has first discussed the principal debtor, if he is solvent. This right the surety enjoys, as the *beneficium ordinis vel excussionis*. And, again, if other persons are joined with him in the obligation as sureties, he is not in the first instance to be proceeded against for the whole debt, but only for his share of it, if his co-sureties and co-obligees are solvent. This is commonly known as the benefit of division, or *beneficium divisionis*. If the suit should be brought in a different country from that where the contract or obligation is made, the right of discussion or division would still belong to the surety, as an incident to his contract, although it did not exist by the law of the place where the suit was brought (*lex fori*). The converse proposition would be equally true. The same rule as to the *lex loci contractûs* applies to the lien of a vendor upon a real estate sold for the payment of the purchase money, according to the law of England; the lien given for the purchase money upon goods or merchandise sold, by the civil law and by the law of some modern countries; the right to stoppage *in transitu* of the vendor of goods, in case of the insolvency of the purchaser in the course of the transit; the lien of the holder of a bottomry bond on the thing pledged; the lien of mariners on the ship for their wages; the priority of payment *in rem*, which the law sometimes attaches to peculiar debts or to particular persons. In these and like cases, where the lien or privilege is created by the *lex loci contractûs*, it will generally, although not universally, be respected and enforced in all places where the property is found or where the right can be beneficially enforced by the *lex fori*. On the other hand, where the lien or privilege does not exist in the place of the contract, it will not be allowed in another country, although the local law, where the suit is brought, would otherwise sustain it.—*Story's Confl. of Laws*, 456.

Disease among cattle. See CATTLE.

Diseases Prevention Act, 18 & 19 Vict. c. 116; amended by 23 & 24 Vict. c. 77; and replaced, except as to the metropolis, by the Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 120 *et seq.* See also CONTAGIOUS DISEASES; INFECTIOUS DISEASES.

Disentailing deed, an enrolled assurance barring an entail, pursuant to 3 & 4 Wm. IV. c. 74.

Disforest. See DISAFFOREST.

Disfranchisement, the act of depriving of a franchise, immunity, or privilege; the depriving a constituency of a right to return a member to Parliament, or a person of a right to vote at a Parliamentary or Municipal Election.

Disgavel, to exempt from the rules of the tenure of gavelkind.

Disgrading, the act of degrading.

Disherison, the act of debarring from inheritance.

Disheritor, one who puts another out of his inheritance.

Dishonour, to refuse or neglect to accept or pay when duly presented for payment a bill of exchange or promissory note, or draft on a banker. See Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 47.

Disincarcerate, to set at liberty, to free from prison.

Disinherison. See DISHERISON.

Disme [fr. *decimæ*, Lat.], a tenth, the tenth part, tithes due to the clergy, the tenth of all spiritual livings.—2 & 3 *Edw. III.* c. 35.

Dismissal of Action. This may take place upon default in delivery of statement of claim, failure to give notice of trial, etc.—R. S. C. 1883, Ord. XXVII., XXXVI., r. 12.

Dismissal of bill. A bill in Equity might be dismissed by the Court at the hearing, or by the plaintiff before decree, when unable to prosecute his suit. After decree the bill could only be dismissed upon re-hearing or appeal; and by the defendant either for want of prosecution, or upon an abatement by the death of the plaintiff or otherwise.—*Dan. Ch. Pr.*, 4th ed., 731—742.

Dismortgage, to redeem from mortgage.

Disorderly houses. Houses where persons congregate to the probable disturbance of the peace or other commission of crime. See 25 Geo. II. c. 36, by which prosecutions by indictment of persons keeping 'bawdy houses, gaming houses, and other disorderly houses' for the common law misdemeanour of keeping such houses are encouraged, and see also s. 13 of the Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69, by which the keeping of bawdy houses is punishable on summary conviction. And see *Burn's Justice*, voce *Disorderly House*.

Disorderly Person. See IDLE AND DISORDERLY PERSON.

Disparagement [fr. *dis*, apart, and *par*, Lat., equal], the matching an heir in marriage under his degree or against decency.—*Co. Litt.* 107.

Dispark, to throw open a park.

Dispatches, or **Despatches** [fr. *despercher*, Fr., to send away quickly, to discharge], a

message, letter, or order sent with speed on affairs of state.

Dispauper, when a person by reason of his poverty is admitted to sue *in formâ pauperis*, and afterwards, before the suit be ended, acquires any lands or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right to sue *in formâ pauperis*, and is said to be dispaupered.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus. 10 Co. 88.—(A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.)

Dispensatio est vulnus, quod vulnerat jus commune. Dav. 69.—(A dispensation is a wound, which wounds common law.)

Dispensation, an exemption from some laws, a permission to do something forbidden, an allowance to omit something commanded, the canonistic name for a license.

Dispersonare, to scandalize or disparage.—*Blount.*

Dispone, to transfer or alienate.—*Scotch Law.*

Dispunishable, without penal restraint.

Disrationare, or **Dirationare,** to justify; to clear one's self of a fault; to traverse an indictment; to disprove.—*Encyc. Lond.*

Dissection, the anatomical examination of a dead body. It is regulated by 2 & 3 Wm. IV. c. 75, 'An Act for regulating Schools of Anatomy,' and by 34 Vict. c. 16. The 16th section of the first-mentioned act repeals so much of 9 Geo. IV. c. 31, as authorised the dissection after execution, of the body of a person convicted of murder.

Disseise, to dispossess, to deprive.

Disseisin [fr. *dissaisin*, Fr.], a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant; but an attack upon him who is in actual possession, and turning him out; it is an ouster from a freehold in deed, as abatement and intrusion are ousters in law.—3 *Steph. Com.* A title by disseisin is a good title against all but the rightful owner.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. Co. Litt. 331.—(He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.)

Disseisor, a person who unlawfully puts another out of his land.

Disseisoress, a woman who unlawfully puts another out of his land.

Disseissee, a person turned out of possession.

Dissenters, Protestant seceders from the Established Church. They are of many denominations, principally Presbyterians, Independents, Methodists, and Baptists; but as to Church government the Baptists are Independents. With respect to the penal laws, for the enforcement of legal uniformity, they are either abrogated or relaxed. The Toleration Act, 1 W. & M. st. 1, c. 18, allowed dissenters to assemble for religious worship according to their own forms in places of meeting duly certified (as to such places see now the 18 & 19 Vict. c. 81, and 19 & 20 Vict. c. 119, ss. 17, 27). The 19 Geo. III. c. 44, provided that any dissenting preachers or teachers may keep schools or instruct youth; the 9 Geo. IV. c. 17, repealed the Corporation and Test Acts, and substituted a new form of declaration in lieu of taking the sacrament. As to the marriage of dissenters see 6 & 7 Wm. IV. c. 85. The 7 & 8 Vict. c. 45, provided for meeting-houses or chapels, founded for dissenters; and 9 & 10 Vict. c. 59, protected them from molestation. The Act 13 & 14 Vict. c. 28, amended by 15 & 16 Vict. c. 49, provides for facilities in regard to the title to lands purchased for religious or educational purposes. The 18 & 19 Vict. c. 81, provides for the certifying and registering of dissenters' places of worship. See also 19 & 20 Vict. c. 119, ss. 17, 27. Consult 2 *Steph. Com.*; and title QUAKERS. See further BURIAL.

The 35 & 36 Vict. c. 26, has now abolished the University Tests, and dissenters are now enabled to take any degree (other than a divinity degree) in any of the Universities of Oxford, Cambridge, or Durham.

Dissignare, to break open a seal.

Dissimilium dissimilis est ratio. Co. Litt. 191.—(Of dissimilars the rule is dissimilar.)

Dissolution, the act of breaking up. A partnership may be dissolved either by a proper notice, or effluxion of time as agreed upon in the articles of partnership, or by death, marriage, lunacy, bankruptcy, insolvency, or decree in equity, etc.—*Story on Partnership*, 383. As to dissolution of railway companies, see 9 & 10 Vict. c. 28, and 13 & 14 Vict. c. 83.

A dissolution is the civil death of the parliament, and is effected in two ways:—(1) By the Sovereign's will, expressed either in person or by representation. (2) By length of time, i.e., seven years. By the

30 & 31 Vict. c. 102, s. 51, it is provided that parliament shall not be determined or dissolved by the demise of the Crown.—1 *Geo. I.* st. 2, c. 38.

Dissolution of marriage. See DIVORCE.

Dissolve, to put an end to, cancel, abrogate, annul; applied to an injunction in Chancery; as *discharge* is to a rule *nisi* in Common Law. *Dissolvo* is the Latin for both verbs. If an injunction has been obtained by a misrepresentation of facts it will be dissolved, although, on the merits, it is called for.

Distinguenda sunt tempora; aliud est facere, aliud perficere.—(Times are to be distinguished; it is one thing to do, another to complete.)

Distinguenda sunt tempora; distingue tempora, et concordabis leges. 1 Co. 24.—(Times are to be distinguished; distinguish times, and you will make laws agree.)

Distance. For the purpose of a statute passed after 1st Jan., 1890, the distance is to be measured in a straight line on a horizontal plane.—*Interpretation Act*, 1889, s. 34.

Distinguish (*v.a.*), to point out an essential difference; to prove a case, cited as applicable, inapplicable.

Distrain, to make seizure of goods or chattels by way of distress. See DISTRESS.

Distrainer, or **Distrainor**, he who seizes a distress.

Distraint, seizure.

Distress [fr. *distringo*, Lat., to bind fast; *districtio*, Med. Lat., whence *distraindre*, Fr.), a taking, without legal process, of a personal chattel from the possession of a wrong-doer into the hands of a party grieved, as a *pledge* for the redressing an injury, the performance of a duty, or the satisfaction of a demand.

A distress may be made of common right for the rent payable by a tenant to a landlord, technically termed 'rent-service,' and by particular reservation for rent-charges, and also for rent-seck since the 4 Geo. II. c. 28, s. 5 extended the same remedy to rents-seck, rents of assize, and chief-rents, and thereby in effect abolished all material distinction between them. With respect to fee-farm rents, it has been held that distress is not incident to them, unless the case be brought within the 4 Geo. II. c. 28, s. 5.—*Bradbury* v. *Wright*, 2 *Dougl.* 624.

Distress may also be made at common law on cattle damage feasant, and by statute for rates and taxes, and tithe rent-charge under the Tithe Commutation Act, 6 & 7 Wm. IV. c. 71.

All chattels and personal effects found upon the premises may be distrained by a landlord whether they belong to the tenant, his undertenant, or a stranger, with the following exceptions:—

(1) Fixtures; (2) Animals *feræ naturæ*; (3) Goods delivered to a person in the way of his trade, as a watch sent to a watchmaker to be repaired; (4) Things in the custody of the law; (5) An ambassador's goods, by 7 Anne c. 12, s. 3; (6) A lodger's goods, by 34 & 35 Vict. c. 79; (7) Woollen, cotton, or silk looms, by 6 & 7 Vict. c. 40; (8) Gas-meters, being the property of a gas company incorporated by statute, by 10 Vict. c. 15, s. 14; (9) Railway rolling stock in works not belonging to the tenant thereof, by 35 & 36 Vict. c. 50; (10) Wearing apparel and bedding of the tenant or his family and the tools and implements of his trade to the value of 5*l.*, by the Law of Distress Amendment Act, 1888, 51 & 52 Vict. c. 21, s. 4, unless the interest of the tenant has expired and possession has been demanded and distress is made not earlier than seven days after demand of possession. All the above are absolutely privileged. (11) Beasts of the plough and sheep, by 51 Hen. III. st. 4; and (12) tools of trade above 5*l.* in value, both of which are privileged 'sub modo' or conditionally, that is, only if there be other sufficient distress on the premises. Also, on agricultural holdings; (13) Hired machinery and breeding stock, absolutely; and (14) agisted stock, conditionally.

A distress cannot be made in the night, i.e., after sunset and before sunrise (except in the case of cattle *damage feasant*, otherwise they might escape), nor on the same day on which the rent becomes due; but must be made within six years from its becoming due. The 8 Anne c. 14, ss. 6, 7, gives a landlord power to distrain, within six calendar months after determination of the lease, but it must be made during the continuance of the landlord's title or interest, and also during the possession of the tenant. By the Real Property Limitation Act, 1874, s. 1, distresses for the recovery of any rent may be made at any time within twelve years next after the time at which the right to make them shall have first accrued; but (by s. 42 of 3 & 4 Wm. IV. c. 27) no arrears of rent can be recovered by distress but within six years next after the same shall have become due, etc. It must be made upon the land whence the rent issues, and the whole of which is due should be distrained for at one time. The outer door of the house can in no case be broken open; but if the outer door be open the person distraining may justify breaking open an inner door or lock to find any goods distrainable.

The landlord's powers are chiefly regulated by the Act of William and Mary, 2 W. & M. s. 1, c. 5 (under which the power to *sell* was first obtained, the goods being at common law taken by way of *pledge* only), as amended by the Law of Distress Amendment Act, 1888, 51 & 52 Vict. c. 21, which made applicable to all tenancies *some* of the provisions applied to agricultural tenancies only by the Agricultural Holdings Act, 1883.

The Act of William and Mary allows the sale only after written notice of the distress, and gives double damages against any person distraining and selling if no rent is due.

The Act of William and Mary also requires appraisement before sale in all cases, but the Act of 1888 dispenses with it unless it be required in writing by the tenant or owner of the goods; and enacts also that the goods must, at the request of the tenant or owner, be removed to a public auction room, and there sold. The Act of William and Mary postponed the power of sale for five days, and this period is extended, by the Act of 1888, to not more than fifteen on the written request of the tenant or owner. The Act of 1888 also requires that no person shall act as a bailiff to levy a distress for rent unless he be authorised so to act by the certificate of a County Court Judge, and invests the Lord Chancellor with the power of making rules from time to time for regulating the security to be required from bailiffs, and the fees, charges, and expenses of distresses, and also for carrying into effect the objects of the Act of 1888.

(For 'the Law of Distress Rules, 1888,' under this enactment, see *Chit. Stat.*, vol. viii., p. 418.)

In addition to the above provisions in favour of tenants generally, agricultural tenants enjoy three special privileges under the Agricultural Holdings Act (see that title). These are (1) that the six years' arrears of rent recoverable from other tenants are reduced to one year; (2) that agricultural or other machinery on hire, and live stock on hire for breeding purposes, are absolutely exempted, while agisted stock can only be distrained if there be no other distrainable goods upon the premises, and then only for the amount due to the tenant for their keep; and (3) disputes as to distress may be determined either by a County Court Judge, or a Justice of the Peace.

For the other statutes and general law relating to the subject, see *Oldham and Foster's Law of Distress*; *Woodfall's Law of Landlord and Tenant*, ch. xi.; and *Chit. Stat.*, vol. iii., tit. '*Landlord and Tenant.*'

Distress infinite, one that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered. Such are distresses for fealty or suit of Court, and for compelling jurors to attend, and under a writ of delivery, as to which see DETINUE.

Distribution, the act of dealing out to others; dispensation.

Distributions, Statute of, 22 & 23 Car. II. c. 10, explained by 29 Car. II. c. 3, enacts, that the surplusage of intestates' personal estate (except of *femes covert*, the adminstration and enjoyment of whose estates belonged, at Common Law, to their husbands—but see MARRIED WOMEN'S PROPERTY) shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner: one-third shall go to the widow of the intestate and the residue in equal proportions to his children, or, if dead, to their representatives, that is, their lineal descendants; *if there be no children or legal representative subsisting, then a moiety shall go to the widow, and a moiety to the next of kindred in equal degree, and their representatives*; if no widow, the whole shall go to the children; if neither widow nor children, the whole shall be distributed amongst the next of kin, in equal degree, and their representatives, but no representatives are admitted among collaterals farther than the children of the intestate's brothers and sisters. The following relations are considered as of the same degree of kindred:—(1) parents and children; (2) grandfather, grandson, and brother; (3) great-grandfather, great-grandson, uncle, and nephew: (4) great-great-grandfather, great-great-grandson, great-uncle, great-nephew, and first-cousin. The half-blood take equally with the whole blood in the same degree. The widow of an intestate dying without issue is, in amendment of the words italicised above, entitled, by the Intestates Estates Act, 1890, 53 & 54 Vict. c. 29, to at least 500*l.* out of the real and personal assets of the intestate, or if such assets do not amount to 500*l.*, then to the whole of his estate, as against the next of kin.

Distributive finding of the issue. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively; i.e., in part for plaintiff and in part for defendant.. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the

plaintiff as to the goods, and for the defendant as to the work.

District [fr. *districtus*, Lat.], the circuit or territory within which a person may be compelled to appear.—*Cowel.* Circuit of authority; province.—*Encyc. Lond.*

District Council, in the Local Government Act, 1888 (see s. 100), means any district council for local government under a *future* Act of Parliament, and until such council is established, a highway, urban, or sanitary authority, as the context may require.

District parishes, ecclesiastical divisions of parishes for all purposes of worship, and for the celebrations of marriages, christenings, churchings, and burials; formed at the instance of Her Majesty's Commissioners for Building New Churches, and regulated by the 'New Parishes Acts,' 1843 & 1844, 6 & 7 Vict. c. 37, and 7 & 8 Vict. c. 94.

District Registrars. See next title.

District Registry. By the Judicature Act, 1873, s. 60, it is provided that to facilitate proceedings in country districts the Crown may, from time to time, by Order in Council, create district registries and appoint district registrars for the purpose of issuing writs of summons and for entertaining proceedings generally in an action down to and including entry for trial. Documents sealed in any such district registry are to be received in evidence without further proof (s. 61); and the district registrars may administer oaths or do other things as provided by rules or a special order of the Court (s. 62). Power, however, is given to a judge to remove proceedings from a district registry to the office of the High Court (s. 65); and see generally ss. 60—66. By Order in Council of 12th of August, 1875, a number of district registries have been established in the places mentioned in that order; and the prothonotaries in Liverpool, Manchester, and Preston, the district registrar of the Court of Admiralty at Liverpool, and the county court registrars in the other places named, have been appointed district registrars. Proceedings in district registries are regulated by R. S. C. 1883, Ord. XXXV.

Districtio, a distress; a distraint.—*Cowel.*

Districtione scaccarii. The 51 Hen. III. st. 5, relating to distresses in the Exchequer for the King's debts.

Distringas (*that you distrain*), anciently called *constringas*, a writ addressed to the sheriff, and issued to effect various purposes. The cases in which it was used in Common Law proceedings may be thus stated:—

(1) A *distringas* to compel *appearance*, where defendant has a place of residence within England or Wales. This writ was abolished by the C. L. P. Act, 1852, s. 24, and the practice provided for by s. 17 substituted in its stead.

(2) A *distringas nuper vicecomitem*, to compel the late sheriff to sell goods, etc., or to bring in the body.

(3) A *distringas in detinue*, a special writ of execution to compel defendant to deliver the goods by repeated distresses of his chattels; or a *scire facias* might be issued against a third person in whose hands they might happen to be, to show cause why they should not be delivered; and if the defendant still continued obstinate, then (if the judgment had been by default or on demurrer) the sheriff summoned an inquest to ascertain the value of the goods and the plaintiff's damages, which (being either so assessed, or by the verdict in case of an issue) were levied on the goods or person of the defendant.—1 *Rol. Ab.* 737. See DETINUE. As to *Distringas* in *quare impedit*, see QUARE IMPEDIT.

(4) A *distringas juratores*, a jury process, abolished by C. L. P. Act, 1852, s. 104.

In equity a *distringas* was issued in these two cases:—

(1) Against a corporation aggregate; the first process to compel appearance was *distringas*, and on its return, an *alias distringas*, and then a *pluries* were issued, and upon the return of the latter, if default were made, an order *nisi* for a sequestration was obtained as of course, and if no cause was shown, the order would be made absolute.—11 *Geo. IV.* & 1 *Wm. IV.* c. 36.

(2) When a transfer of stock, or the payment of dividends by the Bank of England is sought to be immediately restrained, then instead of moving or petitioning the Court of Chancery for a restraining order a *distringas* was, by 5 Vict. c. 5, s. 5, allowed to be issued.

The effect of this writ is temporary; if, therefore, the person who obtained it wish to continue the restraint upon the transfer, he must either obtain a restraining order, or bring an action against the party interested in the fund, and move for a writ of injunction against the bank, pursuant to 40 Geo. III. c. 36.

By R. S. C. 1883, Ord. XLVI., r. 2, it is provided that no distringas under 5 Vict. c. 5, s. 5, shall any longer be issued, but Rules 3—11 of the same order provide a procedure to be pursued by any person interested in any stock in any company, which has the same effect as distringas under that statute.

Disturbance, annoyance; also the wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. There are five sorts of this injury,—viz.,

disturbance of (1) franchise, (2) common, (3) ways, (4) tenure, and (5) patronage.—3 *Steph. Com.*

Disturbance of Divine worship, an offence against the public peace.—See BRAWLING.

Disturber. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong.—2 *Bl. Com.* 278.

Dittay, the matter of charge or ground of indictment against a person accused of a crime.

Divan [an Arabic or Turkish word], a council-room, a state-chamber, a raised bench or cushion.

Diversité des Courtes, a law treatise supposed to be written in the early part of the 16th century.

Diversity, a plea by the prisoner in bar of execution, alleging that he is not the same who was attainted, upon which a jury is immediately empannelled to try the collateral issue thus raised, viz., the identity of the person; and not whether he is guilty or innocent, for that has been already decided.—4 *Bl. Com.* 396. See also 1 *Hale's Pleas of the Crown,* 370.

Divest. See DEVEST.

Divide et impera cum radix et vertex imperii in obedientium consensu rata sunt. 4 Inst. 35.—(Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.)

Dividend, a share, the part allotted in division; the interest paid on the public funds; the division of a bankrupt's effects.

Dividenda, an indenture; one part of an indenture.—*Old Records.*

Divinatio, non interpretatio, est quæ omnino recedit à litera. Bacon.—(It is guessing, not interpretation, which altogether departs from the letter.)

Divine right. The word whereby, in the seventeenth century, the English sovereigns were by some persons held to reign. See NON-RESISTANCE.

Divine service, tenure by, an obsolete holding, in which the tenants were obliged to perform some special divine services, as to sing so many masses, etc.—*Litt.* s. 137.

Divisa, a device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, etc.—*Cowel.* Also a court held on the boundary, in order to settle disputes of the tenants.—*Anc. Inst. Eng.*

Divisional Court. A Court (which takes, under the Jud. Act, the place of the Court 'in banc'; see BANC), constituted of two judges of the High Court or as many more judges as the President of a Division, with the concurrence of the judges of the Division, may think expedient, for the transaction of such business as may be ordered by Rules of Court to be heard by a Divisional Court (App. Jur. Act, 1876, s. 17). Much of the business of the Queen's Bench Division, but none of that of the other Divisions, is transacted by Divisional Courts, consisting usually of two judges. Five judges have thrice sat, but in order for more than two to sit, the President of the Division, with the concurrence of not less than two judges thereof, must be of opinion that it is expedient so to constitute the Court (Jud. Act, 1884, s. 4). See PRECEDENTS.

Divisions of the High Court. The High Court of Justice, created by the Judicature Act, 1873 (36 & 37 Vict. c. 66), was by section 31 of that Act, for the more convenient despatch of business, divided into *five* Divisions, which were called the Chancery, the Queen's Bench, the Common Pleas, the Exchequer, and the Probate, Divorce, and Admiralty Divisions, the judges of these Divisions being for the most part those who sat in the Courts, whose jurisdiction is transferred to the High Court (ss. 5, 16); but s. 32 of the same act gives the Sovereign in Council power to reduce or increase the number of Divisions or the number of Judges attached to each Division; and an Order in Council under this section, which came into force on the 26th February, 1881, united in one 'Queen's Bench Division' the judges attached to the Common Pleas and Exchequer Divisions; so that there are now *three* Divisions.

Divorce [fr. *divortium,* Lat.], the dissolution of the marriage contract, grantable to a husband proving the adultery of his wife, or to a wife proving the adultery of her husband, coupled with cruelty to or with two years' desertion of her, or incestuous or bigamous adultery or an unnatural offence. See MATRIMONIAL CAUSES, and consult *Browne* or *Dixon on Divorce.*

Divortium dicitur à divertendo, quia vir divertitur ab uxore. Co. Litt. 235.—(Divorce is called from *divertendo,* because a man is diverted from his wife.)

Doab, Doowab, any tract of country included between two rivers.—*Indian.*

Do ut des (*I give, that you may give*).

Do, ut facias (*I give, that you may perform*).

Dock [fr. *docke,* Fle., a bird-cage], the place in a court of criminal law in which a prisoner is placed during his trial, and from which he may instruct counsel without the intervention of a solicitor.

Dock warrants. These have been held to be negotiable, and to pass from hand to hand, so as to vest the property in the goods mentioned in them in the holders.

Docket, Docquet [fr. *tocyn*, W., a slip or ticket], or **Dogged,** a list; a brief writing on a small piece of paper or parchment, containing the effect of a greater writing; a register. As to the docquet of a decree in Chancery, see *Smith's Ch. Pr.* 469.

Doctor and Student. Saint Germain is an author who gained considerable note in the reign of Henry VIII. by this famous book. The first dialogue of this work came out in 1518, in Latin, with the following title, 'Dialogus de Fundamentis Legum Angliæ et de Conscientiâ.' The second dialogue was printed in English, in 1530, and the next year there appeared a translation of the first dialogue. Both afterwards passed several editions, under the title of 'Doctor and Student.' The 'Doctor and Student' consists of two dialogues between a doctor of divinity and a student of the common law. These contain discussions on the grounds of our law, and where objections had been stated to some of its rules and maxims it is endeavoured to reconcile them with reason and good conscience. The whole is treated in a popular way, with the freedom and language of conversation, conveying, by means of objections and their answers, not an unsatisfactory account of many principles and points of the common law.—4 *Reeves*, c. xxx., pp. 416, 418.

Doctors' Commons, an institution near St. Paul's Cathedral where the Ecclesiastical and Admiralty Courts were held. In 1768, a royal charter was obtained, by virtue of which the members of the society and their successors were incorporated under the name and title of 'The College of Doctors of Laws exercent in the Ecclesiastical and Admiralty Courts.' The college consisted of a president (the Dean of Arches for the time being), and of those doctors of laws who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, had been elected fellows of the college in the manner prescribed by the charter. The property of the college was sold, the charter surrendered, and the college dissolved under the powers of Court of the Probate Act, 1857, 20 & 21 Vict. c. 77, ss. 116, 117.

Documents, records, writings, precepts, instructions, or directions.

Doe, John, the fictitious plaintiff in ejectment, whose services have been dispensed with since the abolition of the fiction by the Common Law Procedure Act, 1852, 15 & 16 Victt. c. 76. See EJECTMENT.

Dœd-bana, the actual perpetrator of a homicide.

Dog. The Metropolitan Police Act, 2 & 3 Vict. c. 47, extended to all parts of the United Kingdom by 17 & 18 Vict. c. 60, s. 2, prohibits, under a penalty, the use of any dog for the purposes of draught.

Dog licenses are regulated by 30 Vict. c. 5, as amended by 32 & 33 Vict. c. 14, s. 38, and 41 Vict. c. 15, ss. 17—23, and 42 & 43 Vict. c. 21, s. 26.

Hydrophobia is sought to be checked by the Dogs Act, 1871, 34 & 35 Vict. c. 56, under which dangerous stray dogs may be destroyed, and local authorities may, if a mad dog be found within their jurisdiction, issue orders 'placing such restrictions as they think expedient on all dogs not under the control of any person,' and by the Contagious Diseases (Animals) Act, 1886, 49 & 50 Vict. c. 52, s. 8, and orders issued by the Board of Agriculture (superseding the Privy Council) thereunder; also, in the metropolis, by the Metropolitan Streets Act, 1867, 30 & 31 Vict. c. 134, s. 18, under which the commissioner of police may, if he sees fit, issue an order directing 'any dog while in the streets and not led by some person to be muzzled.'

For the protection of cattle and sheep from dogs, the Act 28 & 29 Vict. c. 60 provides that the owner of every dog shall be liable in damages for injuries done to any cattle and sheep by his dog, and that it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such propensity, or that the injury was attributable to neglect on the part of such owner. See *Chitty's Statutes*, vol. ii., tit. '*Dogs*,' and for the 'Rabies Order, 1886,' see ib., vol. viii., p. 9. And see *Lupton on Dogs*.

Dog-draw, the manifest deprehension of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at him, or otherwise, and was caught with a dog drawing after him to receive the same.—*Manwood*, 2, c. viii.

Dog Latin, the Latin of illiterate persons; Latin words put together on the English grammatical system.

Dog stealing is punishable on summary conviction, for the first offence, by six months' imprisonment and hard labour, or fine not exceeding 20*l.* beyond the value of the dog. A second offence is, however, an indictable misdemeanour, punishable by fine or impri-

sonment, and hard labour not exceeding eighteen months, or by both. Similar punishment is provided for persons found in possession of dogs or their skins, knowing them to have been stolen, and a justice may order the restoration of the stolen property to the owner. Corruptly taking money or reward, to aid in the recovery of a stolen dog, is punishable by imprisonment and hard labour for eighteen months. See 24 & 25 Vict. c. 96, ss. 18, 19, 20, and 21.

Dogger, a light ship or vessel; *dogger-fish*, fish brought in ships.—*Cowel.*

Dogger-men, fishermen that belong to dogger-ships.

Dogma, an ordinance of the senate; a theological doctrine promulgated by ecclesiastical authority.—*Law.*

Doitkin, or **Doit** [fr. *dutt*, Du.; *daoto*, Venet.; *da otto soldi*, a piece of eight *soldi*], a base coin of small value, prohibited by 3 Hen. V. c. 1.

Dole, the act of distribution or dealing; a portion or lot; a boundary mark, e.g., a post or mound of earth.

Dole-fish, the share of fish which the fishermen employed in the north seas customarily received for their allowance.—35 Hen. VIII. c. 7.

Dole-meadow, one wherein the shares of divers persons are marked by doles or landmarks.

Doles, or **Dools**, slips of pasture left between the furrows of ploughed land.

Dolg-bote [fr. *dolg.*, Sax., wound, and *bote*, recompense], a recompense for a scar or wound. —*Cowel.*

Doli capax (*capable of crime*).

Doli incapax (*incapable of crime*).

Dolosus versatur in generalibus. 2 Co. 34. —(A deceiver deals in generalities.)

Dolus auctoris non nocet successori.—(The fraud of a predecessor prejudices not his successor.)

Dolus circuitu non purgatur. Bacon.—(Fraud is not purged by circuity.)

Dolus malus (opposed to *dolus bonus*, artifice which the law considers honestly employed) means fraud.—*Sand. Just.*, 5th ed., 318, 433, 471.

Domboc, or **Dombec** [Sax.], dome-book.

Dome, or **Doom** [Sax.], a judgment, sentence, or decree.

Dome-book [*liber judicialis*, Lat.], a book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book is said to have been extant so late as the reign of Edward IV., but it is now lost.

Domesday, or **Domesday-book** [*liber judiciarius vel censualis Angliæ*, Lat.], a most ancient record made in the time of William the Conqueror, and now remaining in the Exchequer, fair and legible, consisting of two volumes, a greater and lesser; the greater containing a survey of all the lands in England except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which, it is said, were never surveyed; and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than in matter, made by command of the same king. And there is a fourth book kept in the Exchequer, which is called Domesday, and, though a very large volume, is only an abridgment of the others. Likewise a fifth book is kept in the Remembrancer's Office in the Exchequer, which has the name of Domesday, and is the same as the fourth above mentioned. Our ancestors had many dome-books. The question whether lands are ancient demesne or not is to be decided by the Domesday of Wm. I., whence there is no appeal. The addition of *day* to this Dome-book, was not meant for an allusion to the final day of judgment, as most persons have conceived, but was to strengthen and confirm it, and signifies the judicial decisive record or book of dooming justice and judgment.—*Spelman*; 1 *Reeves*, 219.

Domesmen [hence, *Æg deme*, I judge], judges or men appointed to doom and determine suits and controversies. See DAYSMEN.

Domestics, menial servants (so called from being *intra mœnia domûs*, within the walls of a house). The contract between them and their masters arises upon the hiring. In this country it is usual to engage domestic servants at a fixed amount of wages per annum. But there is generally no express stipulation as to the time that the service is to last; and when the terms are not otherwise defined the contract is thus understood, that either party may determine the service at pleasure, upon a month's warning or upon payment of a month's wages. See MASTER AND SERVANT.

Domicellus, a better sort of servant in monasteries; also an appellation of a king's bastard.—*Encyc. Lond.*

Domicile, the place where a person has his home.

By the term 'domicile,' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense, the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a

person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi*).

Two things, then, must concur to constitute domicile: first, residence; and secondly, the intention of making it the home of the party. There must be the fact and the intent; for, as Pothier has truly observed, a person cannot establish a domicile in a place, except it be *animo et facto*.

From these considerations and rules the general conclusion may be deduced, that domicile is of three sorts; domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domicilium originis*; the second is that which is voluntarily acquired by a party, *proprio marte*; the last is consequential, as that of the wife arising from marriage. —*Story's Confl. of Laws*, s 46. The best definition, as applied to an acquired domicile, is—that place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.—*Lord* v. *Colvin*, 4 *Drew*. 366.

If a person leave his own country with the intention of remaining abroad till death, he, nevertheless, retains his domicile of origin until he fix his domicile in some particular place.

It is a clearly established rule that the validity of a will, disposing of personal estate, as regards form, is regulated by the law of the country in which the deceased was domiciled at the time of his death. The application of this rule to the cases of British subjects dying abroad, and of foreigners dying in this country leaving wills, gave rise to great inconvenience, to remove which two statutes were passed in 1861.

By the first of these, 24 & 25 Vict. c. 114, it is enacted amongst other things that every will, etc., made out of the United Kingdom by a British subject (whatever may have been his domicile) shall, as regards personal estate, be held to be well executed, for the purpose of probate, and in Scotland of confirmation, if the same be made according to the law of the place where it was made, or the law of the place where the deceased was domiciled when it was made, or the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin. By the second statute, 24 & 25 Vict. c. 121, in cases where a convention shall have been entered into between Her Majesty and any foreign state that such statute shall be applicable to the subjects of Her Majesty and such foreign state, it is enacted that no British subject dying in such foreign state, and that no subject of such foreign state dying here shall be deemed to have acquired a domicile in the place of his death unless he shall have resided there for one year; but no convention having been entered into with any foreign state, this enactment is inoperative. See *Dicey on Domicil.*

Domigerium, power over another; also danger.—*Bract.* l. 4, t. 1, c. x.

Domina (Dame), a title given to honourable women, who, anciently, in their own right of inheritance, held a barony.—*Cowel.*

Dominant tenement, a term used in the civil and Scotch law, and thence in ours, relating to servitudes, meaning the tenement or subject in favour of which the service is constituted; as the tenement over which the servitude extends is called the servient tenement. See *Bell; Smith's Dict. of Antiq.*, tit. '*Servitudes*'; and *Gale on Easements*, 4th ed., 5, 14.

Dominica. An island in the West Indies. See 2 & 3 Wm. IV. c. 125; 5 & 6 Wm. IV. c. 57; 23 & 24 Vict. c. 57; and 30 & 31 Vict. c. 91. As to Court of Appeal in Dominica see 13 & 14 Vict. c. 15, s. 1.

Dominica in ramis palmarum. Palm Sunday.—*Cowel.*

Dominical, that which denotes the Lord's Day, or Sunday.

Dominicide [fr. *Dominus*, Lat., master, and *cædo*, to kill], the act of killing one's lord or master.

Dominium directum, in the feudal law, the interest vested in the superior; the superiority. See *Bell's Scotch Law Dict.*

Dominium non potest esse in pendenti.—(Lordship cannot be in suspense.)

Dominium utile, the possessory or vassal's title to the soil, or the right to its use and profits. See *Bell's Scotch Law Dict.*

Dominus. This word, prefixed to a man's name, in ancient times, usually denoted him a knight or a clergyman, a gentleman or a lord of the manor; also a principal in the Roman Law.

Dominus aliquando non potest alienare.—(A lord sometimes cannot alienate.)

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis. Co. Litt. 18.—(The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.)

Dominus litis, the controller of a suit or litigation; also an advocate who, after the death of his client, prosecuted a suit to sentence for the executor's use.—*Civ. Law.*

Dominus navis, the absolute owner of a ship.

Dominus non maritabit pupillum nisi semel. Co. Litt. 9.—(A lord cannot give a ward in marriage but once.)

Dominus rex nullum habere potest parem multo minus superiorem. (The king cannot have an equal, much less a superior.)—1 *Reeves*, 115.

Domitæ naturæ animalia, tame and domestic animals, as horses, kine, sheep, poultry, etc.

Domitellus, a title anciently given to the French king's natural sons. See DOMICELLUS.

Dommages interets [Fr.], damages.

Domo reparandâ, a writ that lay for one against his neighbour, by the anticipated fall of whose house he feared a damage and injury to his own.—*Reg. Orig.* 153.

Domus conversorum, an ancient house built or appointed by King Henry III., for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from this kingdom, deputed the place for the custody of the rolls and records of the Chancery.

Domus Dei, the House of God, applied to many hospitals and religious houses.

Domus Procerum, the House of Lords, abbreviated into *Dom. Proc.*, or *D. P.*

Domus sua cuique est tutissimum refugium. 5 Rep. 92.—(To every one his own house is the safest refuge.)

Dona clandestina sunt semper suspiciosa. 3 Co. 81.—(Clandestine gifts are always suspicious.)

Donari videtur, quod nullo jure cogente conceditur. D. 50, 17, 82.—(A thing is said to be given when it is yielded otherwise than by virtue of a right.)

Donary, a thing given to sacred uses.

Donatory, the person on whom the King bestows his right to any forfeiture that has fallen to the Crown.—*Scotch Law.*

Donatio mortis causâ, a gift of personal property in prospect of death; a death-bed disposition; an intimate gift of personalty consummated by the giver's death.

It is derived from the civil law: Justinian's Inst. lib. 2, tit. 7, shows its nature. To render this kind of gift valid, it (1) must be made by the giver, when ill, in anticipation of his death; (2) must be intended to take effect only upon his death by his existing illness, for his recovery from that illness, or his subsequent personal revocation of the gift, as by resuming its possession, will defeat it; and (3) a *traditio* or delivery, either actual or symbolical, of the subject of the gift, or of the instrument which represents it, must be made to the donee, either for his own use, or upon trust for another person, or for a particular person. It is to be observed that the gift of a cheque upon a banker is not good as *donatio mortis causâ*, because it is a gift which can only be made effectual by obtaining payment of it in the donor's lifetime, and is revoked by his death. See *Tate* v. *Hilbert*, 2 *Ves. Jun.* iii. (1793). And so a promissory note not payable to bearer.

For a critical case upon this subject see *Bouts* v. *Ellis*, 4 *De G. M. & G.* 249; 17 *Beav.* 121. This kind of gift resembles a legacy, but differs from a gift *inter vivos*, inasmuch as it is ambulatory, incomplete, and revocable during the donor's life; is liable to his debts upon a deficiency of assets; may be made to his wife, and is subject to legacy duty under 8 & 9 Vict. c. 76, and to account duty under the Customs and Inland Revenue Act, 1881. It, however, differs from a legacy, in that it does not need probate, from the donee's title being directly derived from the giver in his lifetime; it is not a testamentary act; and it is taken against and not from the executor, whose assent to its enjoyment is not necessary.

Donatio non præsumitur (a gift is not presumed).

Donatio perficitur possessione accipientis. Jenk. Cent. 109.—(A gift is perfected by possession of the receiver.)

Donatio principis intelligitur sine præjudicio tertii. Davis, 75 *b.*—(A gift of the prince is understood without prejudice to a third party.)

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio mondum fuerit subsecuta. Co. Litt. 56.—(Some gifts are perfect, others incipient or not perfect; as if a gift were read and agreed to, but delivery had not then followed.)

Donative, a species of advowson, when the Queen, or any subject by her license, founds a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to her visitation only, and not to that of the ordinary; and vested absolutely in the clerk by the patron's deed of donation without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England. If the patron *once* waive the privilege of donation and present to the bishop, and his clerk is admitted and instituted, the advowson becomes presentative, and shall never be donative any more.—2 *Bl. Com.* 23. See ADVOWSON.

Donatur nunquam desinit possidere ante-

quam donatarius incipiat possidere. Dyer, 281.—(He who gives never ceases to possess before that the receiver begins to possess.)

Donatrix, a female giver. See DONOR.

Donee [fr. *dono*, Lat.], one to whom a gift is made.

Don grant et render, *a fine sur*, was a double fine, comprehending the fine *sur cognizance de droit come ceo, etc.*, and the fine *sur concessit*, and might have been used to create particular limitations of estates; whereas the fine *sur cognizance de droit come ceo, etc.*, conveyed nothing but an absolute estate, either of inheritance or at least of freehold.—1 *Steph. Com.*

Donis conditionalibus, Statute de, 13 Edw. I. c. 1, A.D. 1226, otherwise called Westminster the Second. At the date of this statute a gift to a man and the heirs of his body, provided that if he had no heirs the lands should revert, was construed to give the donee a conditional fee, which enabled him, after issue begotten, to alien the land, and thereby to disinherit the issue, and to deprive the donor of his right of reverter. This interpretation is declared by this statute to be 'contrary to the minds of the givers, and the form expressed in the gift': wherefore it is ordained that the 'will of the giver, according to the form in the deed of gift manifestly expressed, be henceforth observed; so that they to whom the land is given under such condition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it is given after their death, or shall revert to the giver or his heirs if issue fail, or there is no issue at all. And if a fine be levied hereafter upon lands so given, it shall be void in law.' The intolerable mischief introduced by this statute was got rid of by the fictitious proceedings of common recoveries, which were abolished by 3 & 4 Wm. IV. c. 74, an act that has completely unfettered these estates.

Donor, a giver, a bestower, one who gives lands to another in tail, etc.

Doom [fr. *dom*, A.S., judgment; fr. *deman*, to deem or form a judgment], judicial sentence; judgment.

Doomsday-book. See DOMESDAY-BOOK.

Dormant claim, a claim in abeyance.

Dormant partners, those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. Unknown partners are properly secret partners; but in common parlance they are usually designated by the appellation of dormant partners. They are held responsible as partners, until retirement, to third parties, although they may not be so chargeable *inter se.* See 28 & 29 Vict. c. 86; and see DISCLOSURE and PARTNERSHIP.

Dormiunt aliquando leges, nunquam moriuntur. 2 Inst. 161.—(The laws sometimes sleep, never die.)

Dorture [contracted from *dormiture*], a dormitory of a convent; a place to sleep in.

Dos de dote peti non debet. 4 Co. 122.—(Dower from dower ought not to be sought.)

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominio suo ut de feodo, etc. Co. Litt. 336.—(Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.)

Dossale, hangings of tapestry.—*Mat. Par.*

Dotal, relating to the portion of a woman: constituting her portion; comprised in her portion.

Dotation, the act of giving a dowry or portion; endowment in general.

Dote assignandâ, a writ for a widow, where it was found by office that the king's tenant was seised of lands in fee, or fee-tail, at his death, and that he held of the king and chief, etc.—*F. N. B.* 26, *Reg. Orig.* 297.

Dote unde nihil habet, a writ of dower that lies for the widow, against the tenant of lands whereof he was solely seised in fee-simple, or fee-tail, and of which she was dowable.—*F. N. B.* 147.

Doti lex favet; præmium pudoris est, ideo parcatur. Co. Litt. 31.—(The law favours dower, it is the reward of chastity, therefore let it be preserved.)

Dotis administratio, admeasurement of dower, where the widow holds more than her share, etc.

Double avail of marriage, the double of the value of the vassal's wife's tocher, formerly due to the superior, when the vassal refused a wife equal to him and offered by the superior; but this was modified to three years' rent of the vassal's free estate.—*Old Scotch Law.*

Double complaint or **Double quarrel,** a grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, etc. It is

termed a double complaint, because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is, that the archbishop taking notice of the delay, directs his letter, under his authentical seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear nor show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due.—*Cowel.*

Double or **treble costs,** have been frequently granted by statute, e.g., to successful defendants in actions for irregular distress, by 11 Geo. II. c. 19, s. 20. The true mode of estimating the amount of *double* costs was, first to allow the successful party the single costs including the expenses of witnesses, counsel's fees, etc., and then allow him one-half of the amount of the single costs, without deducting counsel's fees, etc. *Treble* costs consisted of the single costs, half the single costs, and half of that half. But the statutes prior to 1842 which give these costs are repealed by 5 & 6 Vict. c. 97, which enacts that the successful party shall be entitled only to full and reasonable costs, to be taxed by the proper officer, which taxation is, as in ordinary cases, subject to review.

By the County Courts Act, 1888, s. 115, re-enacting s. 18 of the County Courts Act, 1850, 13 & 14 Vict. c. 61, if any party sue another in any County Court for any cause of action for which he has already sued him, and obtained judgment, in any other court, he is not entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party.

Double or **treble Damages** are given in some cases, by particular statutes; see e.g., 2 Wm. & M. sess. 1, c. 5, ss. 4 & 5, which give double and treble damages for pound breach and wrongful sale upon a distress respectively, but at common law the damages are always single. They are not reckoned in the same manner as double and treble costs, but arithmetically.

Double entry, a term among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every transaction. It is used in contradistinction to single entry.

Double insurance, where a person, being fully insured by one policy, effects another on the same subject with other insurers, he may recover the amount of his actual loss against either set of insurers. But as insurance is a contract of indemnity only, the law will not allow him to recover beyond that amount; and if he obtain full satisfaction upon either of his policies, the under-writers upon this are entitled to contribution from the under-writers upon the other. If the policies are of the same date, all the under-writers on the several policies are equally bound to return to the assured the premiums paid by him for the sum insured above the value of the subject-matter of insurance in proportion to their subscription, but if of different dates, and the amount insured in the first set of policies is not equal to the value of the subject-matter, the under-writers on the last set of policies are alone liable for a return of the premium.—1 *Arnould on Insurance*, 6th ed., 327 *et seq.*

Double pleading. This was not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former was, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning was that none of them was to contain several distinct answers to that which preceded it; and the reason of the rule in each case was, that such pleading tended to several issues in respect of a single claim. See *Steph. Plead.*, 313 *et seq.*

Double Quarrel. See DOUBLE COMPLAINT; DUPLICITY; PLEADING.

Double rent. This is a penalty on a tenant holding over after *his own notice* to quit has expired. By 11 Geo. II. c. 19, s. 13, it is enacted, that in case any *tenant* give notice to quit, and shall not deliver up possession at the time in such notice contained, the said tenant shall, from thenceforward, pay to the landlord double the rent or sum which he should otherwise have paid. See *Woodfall's Landlord and Tenant*, ch. xx., s. 2 (c).

Double value. This is a penalty on a tenant holding over after *his landlord's* notice to quit. By 4 Geo. II. c. 28, s. 1, it is enacted, that if any tenant for life or years hold over any lands, etc., after the determination of his estate, after demand made, and notice *in writing* given, for delivering the possession thereof, by the *landlord*, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorised, such tenant so holding over shall pay to the person so kept out of possession, at the rate of *double the yearly* value of the lands, etc., so detained, for so long a time as the same are detained. See *Woodfall's Landlord and Tenant*, ch. xx., s. 2 (b).

Double voucher, when a recovery was had,

and an estate of freehold was first conveyed to any indifferent person against whom the *præcipe* was brought, and then he vouched the tenant-in-tail, who vouched over the common vouchee. For if a recovery were had immediately against a tenant-in-tail, it barred only the estate in the premises of which he was then actually seised, whereas, if the recovery were had against another person, and the tenant-in-tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. 2 *Bl. Com.* 349. Recoveries were abolished by 3 & 4 Wm. IV. c. 74.

Double waste. When a tenant, bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste.

Doubles, letters-patent.—*Cowel.*

Dow [fr. *do*, Lat.], to give or endow.

Dowable, entitled to dower.

Dowager, a widow endowed.

Dowager-queen, the widow of the king. As such she enjoys most of the privileges belonging to her as queen consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man, however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods.—1 *Bl. Com.* 233.

Dower [fr. *dos dotis*, Lat., a marriage gift; *dotare douer*, Fr., endow, to furnish with a marriage portion. *Dotarium*, M. Lat., *dotaire*, Prov.; *douaire*, Fr., a dowry or marriage provision; *douairière*, a widow in possession of her portion, a dowager], the right which a wife has in the third part of the lands and tenements of which her husband dies possessed in fee-simple, fee-tail general, or as heir in special tail, which she holds from and after his decease, in severalty by metes and bounds, for her life, whether she have issue by her husband or not, and of what age soever she may be at her husband's decease, provided she be past the age of nine years.

The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obtrusive of the free course of conveyances. The legislature by the 27 Hen. VIII. c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a *jointure* in lieu of *dower*. By effect of this statute no widow can claim both jointure and dower. See JOINTURE.

But this statutable bar was found highly inconvenient, and recourse was had to many ingenious devices to prevent or defeat dower; but they were all more or less imperfect, and at length gave way to the universal practice of making an artificial form of a conveyance, which obtained the name of a conveyance to uses to bar dower. The land was conveyed to such uses as the owner should appoint, and, in default of appointment to him for life, and on the determination of his estate in his lifetime, to a trustee and his heirs for the life of the owner in trust for him, and on the determination of the estate of the trustee, to the owner and his heirs.

An equitable bar of dower was deemed sufficient as between vendor and purchaser; as if a wife contract before marriage to relinquish her dower, either in consideration of a substituted provision, or of marriage, which is valuable in itself, and the highest consideration known to the law.

The report of the Real Property Commissioners led the way to the passing of the Dower Act, 3 & 4 Wm. IV. c. 105, which places a wife's right to dower entirely at the mercy of her husband. In this act the word 'Land' extends to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower).

'When a husband dies *beneficially* entitled to any land for an interest not dowable at law, and such interest, *whether wholly equitable or partly legal and partly equitable*, is an estate of inheritance in possession, or equal thereto (other than estate in joint-tenancy), his widow is entitled, *in equity*, to dower out of the same land (s. 1).'

This section has abolished a great anomaly. Dower was considered as a mere *legal* right, and did not attach unless the husband was during the coverture, solely seised in possession of the legal inheritance; it was held, therefore, that equity ought not to create the right where it did not subsist at law, and that a wife was not dowable of a trust estate.

This distinction is abolished, and dower is made to attach, in equity, upon the beneficial interest in possession of a sole owner of the inheritance, whether the ownership be exclusively equitable, or be in part composed of a legal estate enjoyed beneficially.

The widow is not entitled to dower out of the estates of joint-tenants, because of the right of survivorship.

No widow is entitled to dower out of any land which shall have been *absolutely disposed* of by her husband in his lifetime or by his will (s. 4). A widow is not entitled to dower out of any land of her husband when, in the deed by which it was conveyed to him or by any deed executed by him, it shall be *declared* that his widow shall not be entitled to dower out of such land (s. 6). The widow's right to dower is subject to any

conditions, restrictions, or directions which shall be declared by her husband's will (s. 8).

These sections contain the essential alterations made by this act, and put the widow's dower altogether in the husband's power. It used to be a principle, that, after a title to dower had once attached, it was not in the power of the husband alone to defeat it by any act in the nature of alienation, or charge, whether voluntary, as by deed or will, or involuntary, as by bankruptcy, etc.; and that, therefore, all interests created by the husband after the attachment of title to dower, were voidable as to that part of the land which was recovered in dower.

The act does not extend to the dower of any woman married on or before the 1st January, 1834, and does not give to any will, deed, contract, engagement, or charge executed, entered into, or created before this day, the effect of defeating any right to dower.

The tenth section enacts, that no gift or bequest made by any husband to or for the benefit of his widow, of or out of his *personal* estate, or of or out of any of his land *not liable to dower*, shall defeat or prejudice her right to dower, *unless* a contrary intention be declared by his will.

Nothing in the act prevents any Court of Equity enforcing any covenant or agreement entered into by or on the part of the husband not to bar his widow's right to dower out of his lands, or any of them (s. 11); so that it should be ascertained by the purchaser of an estate free of dower, under this act, that the vendor has not entered into any agreement *not* to bar his widow's dower.

Nothing in the act is to interfere with any rule of equity by which legacies bequeathed to widows, in satisfaction of dower, are entitled to priority over other legacies (s. 12).

The principle alluded to in this clause is, that where a general legacy is given in consideration of a debt owing to the legatee, or of his relinquishing any right or interest, inasmuch as such a bequest cannot be treated as a bounty, like other bequests, but as the purchase-money for such right or interest, payment of it will be preferred to any other general legacies, which are merely voluntary, and, therefore, a legacy given to a widow in satisfaction of dower does not, in the event of a deficiency of assets, abate in proportion to the other legacies. The principle, however, only applies to cases where, on the testator's death, his widow is entitled to dower.

No widow is now entitled to dower *ad ostium ecclesiæ*, or *ex assensu patris* (s. 13).

The right to dower is consummated upon the husband's death, but the widow has no estate in the lands until the heir assign the dower, unless the precise portion of land has been particularly specified. If the property be capable of division, and held by the husband in severalty, dower must be assigned by metes and bounds, but if otherwise, it must be done in a special and certain manner. Dower if not assigned may be recovered by action brought in the Queen's Bench Division of the High Court of Justice. See DOWER UNDE NIHIL HABET.

No arrears of dower, nor any damages on account thereof, are recoverable by action or suit, for more than six years next before the commencement of such action or suit, by 3 & 4 Wm. IV. c. 27, s. 41.

Dower unde nihil habet, writ of, the remedy for a widow to whom no dower had been assigned within the time limited by law. —3 *Bl. Com.* 183. Abolished by C. L. P. Act, 1860.

Dower, Writ of right of, the remedy for a widow who had been deforced of part of her dower.—2 *Bl. Com.* 183. Abolished by C. L. P. Act, 1860, s. 26.

Dowl and deal [fr. *dal*, Brit., *divisio*, from *dælan*, Sax., whence *dealing*], a division.

Dowle stones, stones dividing lands, etc.—*Cowel.*

Downing Street Public Offices Extension Act, 18 & 19 Vict. c. 95, extended by 22 Vict. c. 19, and 29 & 30 Vict. c. 114.

Dowress, a widow entitled to dower.

Dowry [*dos mulieris*, Lat.], otherwise called *maritagium*, or marriage goods, that which the wife brings the husband in marriage. This word should not be confounded with dower. —*Co. Litt.* 31.

Dozen peers, twelve peers assembled at the instance of the barons, in the reign of Henry III., to be privy councillors, or rather conservators of the kingdom.

Dozien, a territory or Jurisdiction. See DECINERS.

Draft, or **Draught,** a bill drawn by one person upon another for a sum of money; an order in writing to pay money; also a rough copy of a legal document, etc., to be settled previously to engrossment; the property of the client, in business within the Solicitors' Remuneration Order (see SOLICITOR) by Rule 3 of that Order.

Dragoman, an interpreter in the East.

Drainage. Drainage for sanitary purposes is regulated by the Public Health Act, 1875, which provides (s. 23), that local authorities may enforce drainage of undrained houses, etc., etc. Drainage for agricultural purposes is provided for by the following statutes:—By 8 & 9 Vict. c. 56, it is provided that the owners of limited interests in settled estates

may apply to the Court of Chancery by petition for leave to make permanent improvements therein, 'by draining the same with tiles, stones, or other durable materials; or by warping, irrigation, or embankment in a permanent manner, or by erecting any buildings thereon of a permanent kind, incidental or consequential to such draining, warping, irrigation, or embankment, and immediately connected therewith'; and that the Court of Chancery, upon such an application, and proof that the money advanced has been duly expended, may make a charge on the inheritance, to be repaid by equal annual instalments not less than twelve nor more than eighteen in number, with interest thereon, in the meantime, payable half-yearly; or in the case of buildings, by equal annual instalments not less than fifteen, nor more than twenty-five in number. See SETTLED LAND.

By the Public Money Drainage Acts, tenants for life and other owners of land may obtain advances from Government for works of drainage, which may be completed within five years: such advances to be repaid by a rent-charge on the land, after the rate of 6*l.* 10*s.* rent-charge for every 100*l.* advanced, and to be payable for the term of twenty-two years. See 9 & 10 Vict. c. 101, explained and amended by 10 Vict. c. 11; 10 & 11 Vict. c. 38; 11 & 12 Vict. c. 119; 13 Vict. c. 31; and 19 Vict. c. 9.

By the private Money Drainage Act, 1849, 12 & 13 Vict. c. 100, amended by 19 & 20 Vict. c. 9, the owner of any land in Great Britain or Ireland might, with the sanction of the Inclosure Commissioners for England and Wales, borrow money for the improvement of such land by works of drainage, such money, with interest not exceeding five per cent. per annum, to be charged on the inheritance of the land, by way of a rent-charge, which is to be personal estate, for the term of twenty-two years. This act is now repealed by the 27 & 28 Vict. c. 114 ('The Improvement of Land Act, 1864'), whereby the commissioners are empowered to sanction improvements, of which improvements, if executed to their satisfaction, the expense may be charged on the fee or the inheritance.

In addition to these acts, the Land Drainage Act, 1861, 24 & 25 Vict. c. 133, provides for the constitution of 'elective drainage districts' to be managed by 'drainage boards' elected by persons rated to the sewers rates of the district. See *Chitty's Statutes*, vol. iii., tit. '*Land Improvement.*'

The tenant of an agricultural holding may, on quitting the holding at the end of the tenancy, recover compensation from his landlord for the expenses of draining it if he has given notice to the landlord before executing the drainage, and the landlord has not exercised his option of executing the drainage himself and charging the tenant with interest on the expenses. See Agricultural Holdings Act, 1883, ss. 1 and 4.

The powers of the Court of Chancery under the above acts are exercised by the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

Dramatic Copyright Acts. See 3 & 4 Wm. IV. c. 15; 5 & 6 Vict. c. 45; 38 & 39 Vict. c. 12. See COPYRIGHT.

Drana, or **Drecca,** a drain or water-course. See 24 & 25 Vict. c. 133.

Drapery [*pannaria*, Lat.], used as a head in our old statute books, and extended to the making and manufacturing of all sorts of woollen cloths.

Drawback, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign market on the same terms as those fetched from countries where they are not taxed.

Most foreign articles imported into this country may be warehoused for subsequent exportation. In this case they pay no duties on being imported; and, of course, get no drawback on their subsequent exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the excess forms a real bounty of that amount, and should be so considered.

See 26 & 27 Vict. c. 33, ss. 16 & 17; and Customs Consolidation Act, 1876, 39 & 40 Vict. c. 36, ss. 100, 104, & 117 *et. seq.*

Drawee, the person on whom a bill of exchange is drawn, who is called, after acceptance, the acceptor. He must be named or otherwise indicated in the bill with reason able certainty.—*Bills of Exchange Act*, 1882, 45 & 46 Vict. c. 61, s. 6. See BILL OF EXCHANGE.

Drawer, the person making a bill of exchange and addressing it to the drawee.

By the Bills of Exchange Act, 1882, s. 21, capacity to draw is co-extensive with capacity to contract (except that a corporation is not, by virtue of that section, capable), and by s. 23 signature is essential to liability.

Drawings Copyright Act. 25 & 26 Vict. c. 68. See COPYRIGHT.

Draw-latches, thieves, robbers, wasters, and roberdsmen.—5 *Edw. III.* c. 14; 7 *Rich. II.* c. 5.

Dreit. DROIT, which see.

Drenches, or **Drenges**, tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither *in auxilio* or *consilio* against him.—*Spelm.*

Drengage, the tenure by which the drenches or drenges hold their lands. See preceding title.

Drifts of the Forest [*agitatio animalium in forestâ*, Lat.], a view or examination of what cattle are in a forest, chase, etc., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest; when all cattle are driven into some pound or place enclosed for the before-mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to common.—*Manwood*, p. 2, c. xv.

Drift-land, Drofland, or **Dryfland**, a yearly rent paid by some tenants for driving cattle through a manor.—*Encyc. Lond.*

Drince-lean, or **drink-lean**, a contribution from tenants in the time of the Saxons towards a potation of ale, provided to entertain the lord or his steward.

Drinking-Fountains. See 25 & 26 Vict. c. 102, s. 70.

Drivers, etc., of public carriages. As to misconduct by them, see 5 & 6 Wm. IV. c. 50, s. 78; 2 & 3 Vict. c. 47, s. 54; 6 & 7 Vict. c. 86, s. 35; 10 & 11 Vict. c. 89, s. 37 *et seq.*; and 12 & 13 Vict. c. 92, s. 22; 16 & 17 Vict. c. 33, s. 17; 24 & 25 Vict. c. 100, s. 35; 30 & 31 Vict. c. 89, s. 17; and 32 & 33 Vict. c. 115, s. 8.

Drofden, a grove or woody place where cattle were kept.

Droit [Fr.], right, justice, equity. The many writs of *droit* or right used in our law were all abolished by 3 & 4 Wm. IV. c. 27, except a writ of dower, or writ of dower *unde nihil habet*, which were in their turn abolished by the C. L. P. Act, 1860, s. 26.

Droits of Admiralty, the perquisites attached to the Office of Admiral of England (or Lord High Admiral). Prince George of Denmark, the husband of Queen Anne and Lord High Admiral, resigned the rights to these *droits* to the Crown, for a salary, as Lord High Admiral, of 7000*l.* a year. When the office was vacant, they belonged of right to the Crown. Of these perquisites, the most valuable is the right to the property of an enemy seized on the breaking out of hostilities. Large sums were obtained by the Crown on various occasions in the course of the last great war for the seizure of the enemy's property, most of which, however, were eventually given up to the public service. In the arrangement of the Civil List during the last two reigns, it was settled that whatever *droits* of Admiralty accrued were to be paid into the Exchequer for the use of the public. The Lord High Admiral's right to the tenth part of the property captured on the seas has been relinquished in favour of the captors.

Droit d'aubaine [*jus albinatus*, Lat., i.e., *alibi natus*, born elsewhere], in old French law, a right of the king, entitling him, at the death of an alien, to all such alien was worth, unless he had a peculiar exemption.—*Spelm.*

Droit-droit, or **jus duplicatum**, a double right, i.e., the right of possession joined with the right of property, which makes a complete title to lands, tenements, and hereditaments. And when to this double right the actual possession is also united, when there is, according to the expression in Fleta, *juris et seisinæ conjunctio*, then, and then only, is the title to property completely legal.—2 *Bl. Com.* 199.

Droit ne done pluis que soit demaunde. 2 Inst. 286.—(Justice gives no more than is demanded.)

Droit ne poit pas morier. Jenk. Cent. 100. —(Right cannot die.)

Droitural, relating to right.

Dromoes, dromos, dromunda, ships of great burden; men-of-war.—*Walsing.* 1292.

Droog, a fortified hill or rock.—*Indian.*

Drop (*v.n.*): when the members of a Court are equally divided on the argument showing cause against a rule nisi, no order is made, i.e., the rule is neither discharged nor made absolute, and the rule is said to drop. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment. An instance of this is afforded by the case of *Bunch* v. *Great Western Railway Company*, 17 Q. B. D. 215.

Drovers, those that buy cattle in one place and sell in another. — *Willis*, 590. See

5 Eliz. c. 12, repealed by 12 Geo. III. c. 71, s. 1.

Dru, a thicket or wood.—*Domesday Book.*

Drugs, adulteration of, see The Sale of Food and Drugs Act, 1875, 38 & 39 Vict. c. 63; and ADULTERATION.

Drunkenness, intoxication with strong liquor; habitual inebriety. *Mere* drunkenness was punishable by statutes 4 Jac. I. c., 5, and 21 Jac. I. c. 7. ss. 1, 3, by a fine of five shillings and confinement in the stocks in default of distress. Under the Licensing Act, 1872 (35 & 36 Vict. c. 94), which repeals various previous enactments, drunkenness *in a public place or licensed house* is punishable by fine (s. 12); *disorderly* drunkenness is punishable by fine or imprisonment (*Ib.*), and refusal by drunken persons to quit licensed premises is punishable by fine, which may be enforced by imprisonment with hard labour (s. 18). By the law of England drunkenness is no excuse for a crime. 'A drunkard,' says Sir Edward Coke (1 *Inst.* 247), 'who is *voluntarius dæmon*, has no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it; *nam crimen ebrietas et incendit et detegit.*' Nevertheless, 'although drunkenness is no excuse for any crime whatever, yet it is often of very great importance where it is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence.'—*Per Patteson, J.*, in *R.* v. *Cruse*, 8 *C. & P.* 541.

But although drunkenness is no excuse for crime, a contract made by a person when so drunk as to be unable to understand what he is doing, is *voidable* if the person with whom the contract was made was aware of the fact, but it is *not void*, and may be ratified when he becomes sober.—*Matthews* v. *Baxter*, *L. R.* 8 *Ex.* 312.

The confinement of habitual drunkards, *voluntarily* submitting themselves thereto in the first instance, is regulated by the Habitual Drunkards' Act, 1879, 42 & 43 Vict. c. 19. This act, which was at first limited to expire in the year 1889 or 1890, but was made practically perpetual by the slightly amending Inebriates Act, 1888, 51 & 52 Vict. c. 19, defines an habitual drunkard as a 'person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, and his or her affairs.' It allows 'retreats' for the reception of such drunkards to be licensed by local authorities, such retreats not to be kept by any licensed keeper of a lunatic asylum, and to be subject to inspection by an 'inspector of retreats' appointed and paid by the Government. The term of confinement is to be as mentioned in the application to be admitted, but it is in no case to exceed 12 months. The drunkard, if he escape from the retreat, may be apprehended and sent back by order of a justice of the peace. The act has as yet been but little used.

Dry-craft [Celt. *dravi*, magician; *draoidheadh*, magic; hence also druid], witchcraft; magic.—*Anc. Inst. Eng.*

Dry exchange [*cambiam siccum*, Lat.], a term invented in former times for the disguising and covering of usury, in which something was intended to pass on both sides, whereas nothing passed but on one side, in which respect it was called dry; punished by 3 Hen. VII. c. 5.

Dry multures, corn paid to the owner of a mill, whether the payers grind or not.—*Scotch Law.*

Dry-rent, a rent reserved without clause of distress. See RENT-SECK.

Duarchy [fr. δύο, and ἀρχή, Gk.], a form of government where two reign jointly.

Duces tecum (*you shall bring with you*) **subpœna.** If a person, even if he be a party to a cause, have in his possession any written instrument, etc., which it is desired to put in evidence at the trial, instead of the common subpœna he is served with a subpœna *duces tecum*, commanding him to bring it with him and produce it at the trial. Upon being served with a copy of this subpœna, he must attend at the trial with the instrument required, and produce it in evidence, unless he have some lawful or reasonable excuse for withholding it, of the validity of which excuse the Court and not the witness is to judge. It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession of the witness; but if it tend to criminate himself or his client (if the witness be a solicitor), or if it be his title-deed, the Court will not compel him to produce it.

If the witness, instead of bringing the papers, etc., required, deliver them to the opposite party, by whom they are withheld, the Court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. A witness, producing papers under a subpœna *duces tecum*, need not be sworn unless he be examined.

Duces tecum licet languidus, a writ directed to the sheriff upon a return that he cannot bring his prisoner without danger of death, he being *adeò languidus*; whereupon the Court grants a *habeas corpus* in the nature of a *duces tecum licet languidus*. But this has

long since been out of use; and where the person's life would be endangered by removal, the law will not permit it to be done.

Duchy Court of Lancaster, a tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands holden of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the County Palatine (which has also its separate chancery, for sealing of writs, and the like), and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this Court are the same as were those on the Equity side of the Court of Chancery, so that it seems not to be a Court of Record; and, indeed, it has been holden that the Court of Chancery has a concurrent jurisdiction with the Duchy Court, and may take cognizance of the same causes. The appeal from this Court lies to the Court of Appeal, Jud. Act, 1873, s. 18.—3 *Bl. Com.* 78. See COUNTY PALATINE.

Duchy of Cornwall. As to the limitation of actions and suits by the Duke of Cornwall, see 23 & 24 Vict. c. 53, and 24 & 25 Vict. c. 62, s. 2. As to leases of the possessions of the duchy, see 25 & 26 Vict. c. 50, s. 49, and 26 & 27 Vict. c. 49. The acts for the management of the duchy are 7 & 8 Vict. c. 65, 26 & 27 Vict. c. 49, and 31 & 32 Vict. c. 35. See STANNARY COURTS.

Ducking-stool. See CASTIGATORY.

Ducroire [Fr.], guaranty; equivalent to DEL CREDERE, which see.

Due [fr. *dû*, Fr.], anything owing. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

It should be observed that a debt is said to be *due* the instant that it has existence as a debt; it may be *payable* at a future time.

Duel, in our ancient law, a legal combat between persons in a doubtful case for the trial of the truth, long since disused. In modern times a duel is a combat with weapons between two persons upon some quarrel precedent, wherein, if one of them is killed, the other and the seconds are guilty of murder whether the seconds fight or not.—*Hawk. Pl.* 47; *Beccaria*, 38, 39. It is a misdemeanour to challenge another to fight, or to provoke another to send a challenge.—*R.* v. *Phillips*, 6 *East*, 464.

Dues, certain payments; rates or taxes.

Duke of Exeter's Daughter, a rack in the Tower, so called after a minister of Henry VI., who sought to introduce it into this country.

Dulocracy [fr. δοῦλος, Gk., a servant, and κράτος, power], a government where servants and slaves have so much license and privilege that they domineer.

Dum-barge, a barge without sails or oars.

Dum bene se gesserit (*while he shall conduct himself well*), during good behaviour, as an appointment to an office may be to hold it during the good behaviour of the appointee, e.g., the office of Recorder as opposed to *durante bene placito*, during the pleasure of the appointer, e.g., the office of Town Clerk.

Dum bidding, in sales at auctions, when the amount which the owner of the thing sold was willing to take for the article was written, and placed by the owner under a candlestick, or other thing, and it was agreed that no bidding should avail unless equal to that.

Dum casta vixerit (*so long as she shall live chaste*). In deeds of separation of husband and wife, it is not uncommonly provided that the allowance thereby insured by the husband to the wife shall continue only so long as she shall live a chaste life. This proviso is termed the 'dum casta clause.'

Dum fuit infra ætatem (*while he was within age*), an abolished writ whereby one who had made a feoffment of his lands while an infant might, when he came of full age, recover them. Within age, he might enter into the land, and take it back again, and by his entry he was remitted to his ancestor's right.—*F. N. B.* 192.

Dum fuit in prisonâ (*while he was in prison*), an abolished writ of entry to restore a man to lands which he had aliened under duress of imprisonment.—2 *Inst.* 482.

Dum non fuit compos mentis (*while he was not of sound mind*), an abolished writ that lay, when a man, not of sound mind, had aliened any lands or tenements, to recover them from the alienee.—*F. N. B.* 499.

Dum sola, whilst single or unmarried.

Dun, a mountain or high open place. The names of places ending in *dun* or *don* were either built on hills, or near them in open places.

Duna, a bank of earth thrown out of a ditch.—*Old Records.*

Dungeon, such an underground prison as was formerly placed in the strongest part of a fortress; a close prison, dark or subterraneous.

Dunio, a double, a kind of base coin less than a farthing.—*Old Records.*

Dunnage, pieces of wood or other material placed against the sides and bottom of the hold of a vessel, to stow the cargo.

Dunsets, people that dwell on hilly places. —*Old Records.*

Dunum, or **Duna** [fr. *dannarium*, Lat.], a down or hill.

Duo non possunt in solido unam rem possidere. Co. Litt. 368.—(Two cannot possess the whole of one thing in specie.)

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas—ratio et auctoritas. 8 Co. 16.—(There are two instruments either to confirm or impugn all things—reason and authority.)

Duodena, a jury of twelve men.—*Cowel.*

Duodenâ manu, twelve witnesses to purge a criminal of an offence.

Duplex querela (*a double plaint*), a process ecclesiastical, in the nature of an appeal from the refusal of an ordinary to institute, to his next immediate superior. See DOUBLE COMPLAINT.

Duplicate, second letters-patent, granted by the Lord Chancellor in the same terms as the first when the latter were void; a copy or transcript of a deed, or other writing; the ticket given by a pawnbroker to the pawner of a chattel.

Duplicate Will, where a testator executes two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the Court of Probate.

Duplicatio, the Roman pleading, answering to our rejoinder.

Duplicationem possibilitatis lex non patitur. 1 R. R. 321.—(Lhe Law does not allow a duplication of possibility.)

Duplicity. See DOUBLE PLEADING.

It was a general rule in Equity that a plea ought not to contain more defences than one, and that a double plea was informal and multifarious, and therefore improper. For if two matters of defence might be thus offered, the same reason would justify the making of any number of defences in the same way, by which the ends intended by a plea would not be obtained, and the Court would be compelled to give instant judgment upon a variety of defences, with all their circumstances, as alleged by the plea, before they were made out in proof; and, consequently, would decide upon a complicated case, which might not exist. *Story's Eq. Plead.* 498. See now PLEADING.

Durante, during; as *durante bene placito*, during pleasure; *durante minore ætate*, during minority; *durante viduitate*, during widowhood; *durante vitâ*, during life.

Durbar, a court, a hall of audience, a levee.—*Indian.*

Durden, a copse, a thicket in a valley.

Duress [fr. *duresse*, Fr.; *durities*, Lat., constraint], imprisonment, compulsion.

Duress is either by imprisonment or by threats. In order toc onstitutedures by imprisonment, either the impriso nment or the duress consequent upon it must be tortious and unlawful. Duress by threat has been thus divided: Through fear (1) of loss of life; (2) of loss of member; (3) of mayhem; (4) of imprisonment.

By the Common Law, a contract made during duress is not void, but voidable; and the person upon whom it is practised may avail himself of the duress, as a special defence to an action thereupon at any time. But the person who has employed the force cannot allege it is a defence, if the contract be insisted upon by the other.

The rule in Equity is, that where a person is not a free agent, and is not able to protect himself, the Court will protect him, and will set aside a contract made under duress. Circumstances also of extreme necessity and distress of the party, although not accompanied by any direct restraint or duress, may, in like manner, so entirely overcome his free agency as to justify the Court in setting aside a contract made by him on account of some oppression or fraudulent advantage, or imposition, attendant upon it.—*Story's Eq. Jurisp.*, vol. i., 201.

Duress by threat (*per minas*) is also an excuse for some crimes, though not all, for although a man be violently assaulted and has no other possible means of escaping death but by killing an innocent person, this fear or force shall not acquit him of murder; for he ought rather to die himself than escape by the murder of an innocent person. But in such a case he is permitted to kill the assailant; for there the law of nature and self-defence, its primary canon, have made him his own protector. It is to be observed too, that the compulsion which takes away guilt must be the fear of no less than present death, or grievous bodily harm; for the mere apprehension of having houses burned, or goods destroyed or injured, is not sufficient.—*Steph. Com.*, vols. i. and iv.

Durham, County Palatine of. The jurisdiction which was, for a long time, vested in the Bishop of Durham for the time being, was taken from him by 6 & 7 Wm. IV. c. 19, which is amended by 21 & 22 Vict. c. 45, and vested as a separate franchise and royalty in the Crown.

As to the jurisdiction of the Durham Court of Chancery, see these acts; and as to the Durham Court of Pleas, see 33 Geo. III. c. 68, and 2 & 3 Vict. c. 16, ss. 4-37, and the Palatine Court of Durham Act, 1889, 52 & 53 Vict. c. 47; but the latter Court is now abolished and its jurisdiction transferred to the High Court of Justice (Jud. Act, 1873, s. 16). See also COUNTY PALATINE.

Dursley, blows without wounding or bloodshed; dry blows.—*Blount.*

Dustuck, a term used in Hindostan for a passport, permit, or order from the English East Indian Company. It generally meant a permit under their seal, exempting goods from the payment of duties.—*Encyc. Lond.*

Dusty-foot. See PIEPOUDRE.

Dutch auction, the setting up of property for sale by auction above its value, and gradually lowering the price till some person takes it.

Duty, a tax, an impost, or imposition; also an obligation. See PENSION.

Dwelling houses *for the Labouring Classes.* See LABOURERS' DWELLINGS.

Dwined, dwindled; consumed.—*Jacob.*

Dyeing and bleaching works, are 'non-textile factories' within the Factory and Workshop Act, 1878. See FACTORY.

Dying declarations. See DEATH-BED DECLARATIONS.

Dyke-reed, or **Dyke-reve**, an officer who has the care and oversight of the *dykes* and *drains* in fenny countries.

Dynamite. The storage and carriage of dynamite is regulated by the Explosives Act, 1875, and see EXPLOSIVE SUBSTANCES. The use of it in public fisheries is prohibited by the Fisheries Dynamite Act, 1877, 40 & 41 Vict c. 65, extended, by the Freshwater Fisheries Act, 1878, 41 & 42 Vict. c. 39, s. 12, to private fisheries.

Dynasty [fr. δυναστέια, Gk., power], a race or succession of kings of the same line or family. Such were the dynasties of Egypt, China, etc.

Dysnomy [fr. δύς, ill, Gk., and νομος, law], the act of making bad laws.

Dyvour (otherwise *Bare-man*), a Scotch term for a person involved in debt, and unable to pay his creditors; synonymous with the word *bankrupt.*—*Skene.*

E.

Ea [Sax.], the water or river; also the mouth of a river on the shore between high and low watermark.

Eadem causa diversis rationibus coram judicibus ecclesiasticis et secularibus ventilatur. 2 Inst. 622.—(The same cause is argued upon different principles before ecclesiastical and secular judges.)

Eadem mens præsumitur regis quæ est juris et quæ esse debet, præsertim in dubiis. Hob. 154.—(The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.)

Ea est accipienda interpretatio quæ vitio caret. Bacon.—(That interpretation which if free from fault is to be received.)

Ea quæ commendandi causâ in venditionibus dicuntur si palam appareant venditorem non obligant. D. 18, 1, 43.—(Those things which are said for the sake of commendation in sales, if they are plainly apparent, do not bind the seller.) See CAVEAT EMPTOR.

Ea quæ in curiâ nostrâ ritè acta sunt debitæ executioni demandari debent. Co. Litt. 289. —(Those things which are properly transacted in our Court ought to be committed to a due execution.)

Ea quæ raro accidunt, non temere in agendis negotiis computantur. D. 50, 17, 64.—(Those things which seldom happen are not rashly to be taken into account in transacting business.)

Ealder, or **Ealding**, an elder or chief. See ADELING.

Ealderman, or **Ealdorman.** See ALDERMAN.

Ealdor-biscop, an archbishop.

Ealdorburg [Sax.], the metropolis; the chief city. Obsolete.

Ealehus [fr. *eale*, Sax., ale, and *hus*, house], an alehouse.

Ealhorda [Sax.], the privilege of assizing and selling beer. Obsolete.

Earl [fr. *eorl*, Sax.; *eoryl*, Erse; *comes*, Lat.], a title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French Comte and the German Graf. The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and allotting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title *shiremen.* At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the House of Lords. In official instruments they are called by the sovereign 'trusty and well-beloved cousins,' an appellation as ancient as the reign of Henry IV., who was, as a fact, related to the greater part of the nobles (see Shakespeare's Henry IV., part 2, act 2, sc. 2), and took this public notice of it as a means of popularity. For some time after the Norman conquest they were called *counts*, and their wives are still called *countesses.*—*Encyc. Lond.*; 1 *Bl. Com.* 398. *Earl* meant originally a man of noble birth, as opposed to *Ceorl.*

Earl Marshal of England, a great officer of state who had anciently several Courts under his jurisdiction, as the Court of Chi-

valry and the Court of Honour. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea Court, now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards.—3 *Bl. Com.* 68, 103; 3 *Steph. Com.*

Earldom, the seigniory of an earl; the title and dignity of an earl.

Earles-penny, money given in part payment. See EARNEST.

Earmark, a mark for identification. Money has no earmark, but it is an ordinary term for a privy mark made by any one on a coin.

Earnest [fr. *eornest*, Sax.], the sum paid by the buyer of goods in order to bind the seller to the terms of the agreement. It is enacted by the 17th section of the Statute of Frauds, 29 Car. II. c. 3, that 'no contract for the sale of any goods, for the price of 10*l.* or upwards, shall be allowed to be good, except the buyer accept part of the goods or give something *in earnest* to bind the bargain, or in part payment,' or some note in writing of the bargain be made and signed by the parties to be charged or their agents.

As to what amount is sufficient earnest, Blackstone lays it down that, 'if any part of the price is paid down, if it be but a penny, or any portion of the goods is delivered by way of earnest, it is binding.' To constitute earnest the thing must be given as a token of ratification of the contract, and it should be expressly stated so by the giver.

Earwitness, one who attests or can attest anything as heard by himself.

Easement, a privilege without profit, which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements, by which the owner of the one (called the *servient*) tenement is obliged to suffer, or not to do something on his own land, for the advantage of the owner of the other (called the *dominant*) tenement, e.g., a right of way, a right of passage of water. It is the *servitus* of the civil law. An easement is an incorporeal hereditament, which from its nature can only be created by grant: hence the origin of all easements may be referred to a grant by the owner of the servient tenement either expressed or implied. In the majority of cases the right is founded upon the implication of a grant, the terms of which can only be ascertained from the actual enjoyment of the easement. Such implication arises in two ways:—1. By the severance of one tenement in two parts; 2. By prescription. See *Gale on Easements*; *Goddard on Easements*; and the title PRESCRIPTION.

East India Company. The East India Company was originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs had become of more importance than their commerce. In 1858, by 21 & 22 Vict. c. 106, the government of the territories of the company was transferred to the Crown. See INDIA.

Easter [fr. *Ostern*, Ger., supposed to be derived from the name of the Teutonic goddess *Ostera* (*oster*, to arise), celebrated by the ancient Saxons early in the spring], a feast of the church held in memory of our Saviour's resurrection.

Easter Monday is made a Bank Holiday by the 34 Vict. c. 17, and 38 & 39 Vict. c. 13.

Easter offerings, or **Easter dues**, small sums of money paid to the parochial clergy by the parishioners at Easter as a compensation for personal tithes, or the tithe for personal labour; recoverable under 7 & 8 Wm. III. c. 6 before justices of the peace.—2 & 3 *Edw. IV.* c. 13; 2 & 3 *Vict.* c. 62, s. 9; *Reg.* v. *Hall*, *L. R.* 1 *Q. B.* 632.

Easter sittings of the Supreme Court commence on the Tuesday after Easter week, and terminate on the Friday before Whitsunday. R. S. C. 1883, Ord. LXIII., Rule 1.

Easter Term, formerly called a movable term, but afterwards fixed, beginning on the 15th of April, and ending on the 8th of May in every year. See 11 Geo. IV. and 1 Wm. IV. c. 70, s. 6; 1 Wm. IV. c. 3, s. 3.

Easter Vacation in the Supreme Court commences on Good Friday, and terminates on Easter Tuesday (R. S. C. 1883, Ord. LXIII., Rule 4). See VACATION.

Easterling, a coin struck by Richard II., which is supposed to have given rise to the name of sterling, as applied to English money.

Eastinus, an easterly coast or country.

Eat inde sine die, words used on the acquittal of a defendant, *that he may go thence without a day*, i.e., be dismissed without any further continuance or adjournment.

Eaves. The edge of a roof, built so as to project over the walls of a house, in order that the rain may drop therefrom to the ground instead of running down the wall.

Eaves-droppers, persons who listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. They are a common nuisance, and presentable at the court-leet, or were indictable at the sessions, and punishable by fine and finding sureties for good behaviour.—2 *Hawk. P. C.* c. x., s. 58.

Ebdomadarius, an officer in cathedral churches who supervised the regular performance of divine service, and prescribed the particular duties of each person in the choir.

Eberemorth, Eberemors, Ebere-murder. See ABEREMURDER.

Ecce modo mirum, quod fœmina fert breve regis, non nominando virum conjunctum robore legis. Co. Litt. 132 *b*.—(Behold, indeed, a wonder! that a woman has the king's writ without naming her husband who by law is united to her.)

Ecclesia, a church, an assembly, a parsonage.

Ecclesia ecclesiæ decimas solvere non debet. Cro. Eliz. 479.—(A church ought not to pay tithes to a church.)

Ecclesia est infra ætatem et in custodiâ domini regis, qui tenetur jura et hæreditates ejusdem manu tenere et defendere. 11 Co. 49. —(The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.)

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriorem nequaquam. Co. Litt. 341.—(The church enjoys the privilege of a minor; it can make its own condition better but not worse.)

Ecclesia non moritur. 2 Inst. 3.—(A church does not die.)

Ecclesiæ magis favendum est quam personæ. Godolphin Rep. Can. 172.—(The church is to be more favoured than the parson.)

Ecclesiarch [fr. ἐκκλησια, Gk., church, and ἀρχός, a chief], the ruler of a church,

Ecclesiastic, or **Ecclesiastical,** something belonging to or set apart for the church, as distinguished from *civil* or *secular*, with regard to the world.

Ecclesiastical Authorities, principally the clergy under the sovereign, as temporal head of the church, set apart from the rest of the people or laity, in order to superintend the public worship of Almighty God and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The several orders of the clergy are—I. Archbishops and bishops. II. Deans and chapters. III. Archdeacons. IV. Rural deans. V. Parsons (under whom are included appropriators) and vicars. VI. Curates. Churchwardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of Ecclesiastical Authorities.

Ecclesiastical Commissioners for England, a body corporate, erected by 6 & 7 Wm. IV. c. 77, empowered to suggest measures conducive to the efficiency of the established church to be ratified by orders in council. Church Estates Commissioners are appointed *ex officio* members of this corporation. See 3 & 4 Vict. c. 113; 4 & 5 Vict. c. 39; 13 & 14 Vict. c. 94; 23 & 24 Vict. c. 124; and 36 & 37 Vict. c. 64. See CHURCH BUILDING COMMISSIONERS ACTS.

Ecclesiastical Corporations. Corporations created for the furtherance of religion, and for the perpetuation of the rights of the church, the members of which are exclusively spiritual persons. They are of two kinds: corporations sole—viz., bishops, certain deans, parsons, and vicars; and corporations aggregate—viz., deans and chapters, and formerly prior and convent, abbot and monks, and the like.

Ecclesiastical Courts [*curiæ Christianitatis*, Lat.], are the Archdeacon's Court, the Consistory Courts, the Court of Arches, the Court of Peculiars, the Prerogative Courts of the two archbishops, the Faculty Court, and the Privy Council, which is the Appeal Court. See also PUBLIC WORSHIP REGULATION ACT.

Ecclesiastical Dilapidations Act, 1871, 34 & 35 Vict. c. 43, amended by 35 & 36 Vict. c. 96.

Ecclesiastical Division of England is into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

Ecclesiastical Law, the law administered in the ecclesiastical courts; it is derived from the civil and canon law. Consult *Phillimore's Ecclesiastical Law.*

Ecdicus [fr. ἔκδικος, Gk., from ἐκ and δίκη, justice], an attorney or proctor of a corporation; a recorder.—*Civ. Law.*

E converso, conversely. See CONVERSE.

Ecumenical [fr. οἰκουμένη, Gk., the habitable world], general, universal; as an Ecumenical Council.

Edderbreche [Sax.], the offence of hedge-breaking. Obsolete.

Edestia [fr. *ædes*, Lat.], buildings.—*Old Records.*

Edia, ease; aid or help.—*Cowel.*

Edict [fr. *edictum*, Lat.], a proclamation, command, or prohibition; a law promulgated.

Education. By the Elementary Education Act, 1870 (33 & 34 Vict. c. 75, amended by Acts of 1873, 1876 (in the direction of compulsory education), 1880, 1890, and 1891 (in the direction of free education), provision is made for the establishment of educational districts; the providing for every such district a sufficient amount of accommodation in public elementary schools, available for all the children resident in such district, for whose elementary education sufficient and suitable provision is not otherwise made; the management of such schools by district school boards; the maintenance of the same by

means of local rates; the enforced attendance of children at such schools, etc.

A Parliamentary grant is made annually to such schools, on conditions (see s. 97 of the Act of 1870 for their authority) set forth in an elaborate *Education Code*, issued annually by the Education Department of the Privy Council.

See further the titles ENDOWED SCHOOLS, GRAMMAR SCHOOLS, INDUSTRIAL SCHOOLS, PUBLIC SCHOOLS, and REFORMATORY SCHOOLS.

Eel-fares, a fry or brood of eels.—25 *Hen. VIII.* c. 4.

Effects, property, goods, and chattels.

Effectus sequitur causam. Wing. 226.—(The effect follows the cause.)

Effeereres. See AFFEERORS.

Effendi, master; a title of respect.—*Turkish.*

Efforcialiter, forcibly; applied to military force.

Effractor [fr. *ex*, out of, and *frango*, Lat., to break], one that breaks through; a burglar.—*Cowel.*

Effusio sanguinis, the mulct, fine, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors.—*Cartular MSS.*

Efters [Sax.], ways, walks, or hedges.—*Blount.*

E. G. [*exempli gratia*], for the sake of an instance or example.

Egistment. See AGISTMENT.

Eia, or **Ey**, an island.—*Cowel.*

Ei incumbit probatio, qui dicit, non qui negat: cum per rerum naturam factum negantis probatio nulla sit.—(The proof lies upon him who affirms, not upon him who denies: since, by the nature of things, he who denies a fact cannot produce any proof.)

Ei nihil turpe, cui nihil satis. 4 Inst. 53.—(To whom nothing is sufficient, to him nothing is base.)

Ejecta, a woman ravished or deflowered, or cast forth from the virtuous.—*Blount.*

Ejectione custodiæ [*ejectment de garde*, Fr.], a writ that lay against him who had cast out the guardian from any land during the minority of the heir. *Reg. Orig.* 162. There were two other writs not unlike this; the one termed *ravishment de garde*, and the other *droit de gard.*

Ejectione firmæ, a writ which lay to eject a tenant from his holding. See next article.

Ejectment, the 'mixed' action at common law to recover the possession of land (which is real), and damages and costs for the wrongful withholding of the land (which are personal).

Until abolished by the C. L. P. Act, 1852, s. 168, the forms of this action exhibited the most remarkable string of fictions then recognized by the courts of common law. The action was commenced by the party claiming title delivering to the party in possession a declaration in which the plaintiff (John Doe) and the defendant (Richard Roe) were fictitious persons. The declaration stated that a lease of the premises in question for a term of years had been made by the party claiming the title (who was the real plaintiff) to John Doe, who entered upon the land by virtue of such demise, and that afterwards Richard Roe, the casual ejector, entered and ousted John Doe, during the continuance of his term. Appended to this declaration was a notice signed by Richard Roe, addressed to the tenant in possession (who was the actual defendant), informing him of the action brought by the lessee, and that Richard Roe had no title to the premises, and advising him to appear at a certain time and defend his title, otherwise he, Richard Roe, would suffer judgment by default, by which the actual tenant would be turned out of possession by the sheriff under a writ of *habere facias possessionem.*

The title of the action, after the tenant's appearance, stood thus:—Doe (the fictitious lessee), on the demise of ——— (the lessor or person really claiming the title), against ——— (the real defendant, the casual ejector Richard Roe having withdrawn).

All this fictitious procedure was abolished by the C. L. P. Act, 1852, which substituted for it a simple writ claiming the land sought to be recovered from the party in possession, but did not allow any pleadings, as in other forms of action. Under the Judicature Act the name of the action was changed to 'Recovery of Land.' See RECOVERY OF LAND.

If a tenant do not forthwith give notice to his landlord of an ejectment having been brought against him, he forfeits three years' rack-rent of the premises recoverable by action (15 & 16 Vict. c. 76, ss. 168—221; *Gen. R. Hil. T.* 1853, 112—114). A plaintiff in the second ejectment for the same premises against the same defendant, may be ordered to give security for costs after the appearance (17 & 18 Vict. c. 125, s. 93).

The 11 Geo. II. c. 19, s. 16, and 57 Geo. III. c. 52, give power to two justices of the peace, when premises are deserted by a tenant, and no sufficient distress is to be found upon them to answer the arrears of rent, to give possession of them to the landlord.

Possession can be obtained by a landlord against his tenant by summary proceedings before two justices, under 1 & 2 Vict. c. 74,

where the term exceeds not seven years, and the rent is not more than 20*l.*, no fine being reserved; and in a County Court where neither the value of the premises nor the rent payable in respect thereof exceeds 50*l.* a year, and where no fine or premium shall have been paid.—19 & 20 *Vict.* c. 108, s. 50.

Ejectment of any kind may be brought in the County Courts where the annual value of the property does not exceed 20*l.* (30 & 31 Vict. c. 142, s. 11).

As to mesne profits, see that title.

Consult *Adams* or *Cole on Ejectment.*

Ejectum, jet, jetsom, wreck, etc.

Ejectus, a whoremonger.—*Blount.*

Eignè [fr. *aîné*, Fr.], eldest, or first-born. See BASTARD EIGNÈ.

Eik *to a reversion*, an additional loan to a wadsetter (or mortgagor), who is the reversioner of the mortgaged estate; also *to a testament*, an addition to an inventory made up by an executor.—*Scotch term.*

Einecia, eldership. See ESNECY.

Eire, or **Eyre** [fr. *iter*, Lat.], the Court of justice itinerant, and justices in eyre. They were, anciently, sent with a general commission into divers counties to hear such causes as are termed pleas of the Crown; and this was done for the ease of the people who must else have been brought to the Queen's Bench, if the cause were too high for the County Court: it is said they were sent but once in seven years. The *eyre of the forest* is the justice-seat, which, by an ancient custom, was held every three years by the justices of the forest journeying up and down for that purpose.—*Bract.* l. 3, c. xi.

Ejuration, renouncing or resigning one's place.—*Encyc. Lond.*

Ejus nulla culpa est cui parere necesse sit. D. 17, 50, 169.—(He is not in any fault who is bound to obey.)

Ejusdem generis (*of the same kind or nature.*)

The term is chiefly used in the cases where general words have a meaning less comprehensive than they would otherwise have, by reason of the particular words preceding them: e.g., the Sunday Act, 29 Car. II. c. 7, enacts that no tradesman, artificer, workman, labourer, or other person whatsoever, shall follow his ordinary calling on Sunday. Here the word 'person' is confined to those of callings of the same kind as those specified by the preceding words, so as not to include a farmer; and see other instances of this rule of construction in *Maxwell on Statutes*, 2nd ed., p. 406.

Electio est interna libera et spontanea separatio unius rei ab aliâ, sine compulsione, consistens in animo et voluntate. Dyer, 281.—(Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.)

Electio semel facta, et placitum testatum, non patitur regressum. Co. Litt. 146.—(Election once made, and plea witnessed, suffers not a recall.)

Elder Brethren. A name of the Masters of the Trinity House.

Election, the act of selecting one or more from a greater number for an office; also the exercise of his choice by a man left to his own free will to take or to do one thing or another.

The doctrine of election, strictly so called, is derived from the civil law, and is the obligation imposed upon a person to choose between two inconsistent or alternative rights, or claims, in cases where there is a clear intention of the person from whom he derives one, that he should not enjoy both. Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention expressed or implied, of the person who has a right to control one or both, that one should be a substitute for the other. The person who is to take has a choice, but he cannot enjoy the benefits of both.

Election of Members of Parliament. See the Reform Act, 1832; the 'Representation of the People Act, 1867'; the Ballot Act, 1872; the Representation of the People Act, 1884; the Redistribution of Seats Act, 1885; *Chitty's Statutes*, vols. iv. and vii., tit. '*Parliament*'; *Rogers on Elections*; and *Lely and Foulkes' Parliamentary Election and Registration Acts.* The manner of proceeding on election petitions is regulated by 31 & 32 Vict. c. 125, and Reg. Gen. of M. T., 1868, made pursuant thereto. Such petitions must be presented to the Queen's Bench Division of the High Court. Voting by ballot was introduced by the Ballot Act, 1872, 35 & 36 Vict. c. 33, which was originally limited to expire on the 31st December, 1880, and has not yet (Dec. 1891) been made perpetual. See CORRUPT PRACTICES.

Election to Municipal Offices. See MUNICIPAL ELECTIONS.

Election Judges. Judges of the High Court selected in pursuance of the 31 & 32 Vict. c. 125, s. 11, and Jud. Act, 1873, s. 38, for the trial of election petitions.

Electiones fiant ritè et liberè sine interruptione aliquâ. 2 Inst. 169.—(Let elections be made rightly and freely, without any interruption).

Elector, he that has a vote in the choice of any officer; a constituent; also the title of certain German princes who formerly had a voice in the election of the German Emperors.

Electoral Divisions, divisions of an administrative county for the purpose of each of them returning a member of the County Council under the Local Government Act, 1888—corresponding to wards in a municipal borough.

Electric Lighting. The supply of electricity for lighting is facilitated and regulated by the Electric Lighting Act, 1882, 45 & 46 Vict. c. 56. Under this act powers may be obtained either (1) by license from the Board of Trade; or (2) by Provisional Order of the Board of Trade, needing confirmation by special Act of Parliament; or (3) by special Act of Parliament. These licenses and orders may either be granted to the local authorities themselves, or, with their consent, to independent contractors. Land may be purchased by agreement, but not compulsorily. Licenses continue in force for any period not exceeding 7 years, but are renewable. By s. 27 an undertaking authorised by provisional order or special act may be purchased compulsorily by the local authority within six months after the expiration of 21 years—a period extended to 42 years by the Electric Lighting Act, 1888.

Large powers of supervision are vested in the Board of Trade. By s. 5 that Board may frame rules as to notices, etc., on application for licenses and provisional orders: and the rules now in force provide (*inter alia*) that a local authority is to have a preference over private contractors. By s. 6 the Board may insert in a license or order such provisions as they think proper in addition to the prices to be charged, the enforcement of a supply of the light, and the securing the safety of the public from personal injury.

Electric Telegraphs, establishment of. See 7 & 8 Vict. c. 85, ss. 13, 14; 26 & 27 Vict. c. 112; 29 & 30 Vict. c. 3. By the 31 & 32 Vict. c. 110, and 32 & 33 Vict. c. 73, provisions are made for transferring the telegraphs to the Postmaster-General. See further on this subject POST OFFICE TELEGRAPHS. The destruction or removal of any part of an electric telegraph, or the obstruction of messages, is a misdemeanour; 24 & 25 Vict. c. 97, ss. 37, 38.

Elects, officers of the College of Physicians.

Eleemosyna, alms.

Eleemosyna Regis, and **Eleemosyna Aratri,** or **Carucarum,** a penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor.—*Leg. Ethel.* c. i.

Eleemosynæ, possessions belonging to the church.—*Blount.*

Eleemosynaria, the place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

Eleemosynarius, the almoner or peculiar officer who received the rents and gifts, and in due method distributed them to pious and charitable uses.

Eleemosynary Corporations, corporate bodies constituted for the perpetual distribution of the free alms or bounty of the founder of them. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges, both in our universities and out of them, which are founded for the promotion of piety and learning by proper regulations and ordinances, and for imparting assistance to the members of those bodies, in order to enable them to prosecute their devotions and studies with greater care and assiduity. These eleemosynary corporations, though in some things partaking of the nature of ecclesiastical bodies, are, strictly speaking, lay, and not ecclesiastical, even though composed of ecclesiastical persons; and accordingly, they are not subject to the jurisdiction of the ecclesiastical courts, or to the visitations of the ordinary or diocesan in their spiritual characters.—3 *Steph. Com.*

Elegit (*he has chosen*), a judicial writ of execution founded on the statute of Westminster II. (13 Edw. I. c. 18) issuing out of the court where the record or other proceeding is upon which it is grounded, and addressed to the sheriff, who, by virtue of it, gives to the judgment-creditor the lands and tenements of the judgment-debtor, to be occupied and enjoyed until the money due on such judgment is fully paid; during the time he so holds them he is called tenant by *elegit*, and his interest is denominated an estate of freehold, defeasible upon a condition subsequent. His interest, however, is really a chattel, and passes to the executor.

The writ of *elegit* (which came more into use since the decision in *Ex parte Abbott*, in re *Gourlay*, 15 *Ch. D.* 447, that s. 87 of the Bankruptcy Act, 1869, did not apply to it) now extends to all the debtor's lands, instead of a moiety as before; and also to the debtor's customary and copyhold lands, subject to the rights of the lord of the manor; also to lands over which the debtor has any disposing power, which he may, without the assent of any other person, exercise for his own benefit; also to trust estates, estates in reversion, or leases for lives or years, rent-charges, lands in ancient demesne, the wife's lands which the husband has during coverture, lands of a bishop, and terms for years; but by virtue of s. 146 of the Bankruptcy

Act, 1883, passed in consequence of *Ex parte Abbott*, supra, *not to goods*. But the following property cannot be extended: an advowson in gross; the glebe belonging to an ecclesiastical benefice, or the churchyard, because they are each *solum Deo consecratum*; and any tenement that cannot be granted over; also an estate vested in a purchaser or mortgagee.—18 & 19 *Vict.* c. 15, s. 11. See 23 & 24 Vict. c. 38, s. 1, which provides that writs of execution of judgments must be registered, otherwise such judgment shall not affect real property as against a *bonâ fide* purchaser for valuable consideration; and 27 & 28 Vict. c. 112, which provides that no judgment, statute, or recognizance to be entered up after the passing of that act, shall affect any land, until such land shall have been actually delivered in execution, by virtue of a writ of *elegit*, or other lawful authority, in pursuance of such judgment, statute, or recognizance.

If no land be extended uponan *elegit* the plaintiff may, of course, have an *elegit* into another county; or even if lands be extended upon the first *elegit* the plaintiff, on a suggestion that the defendant has more lands either in the same, or in another county, may have another *elegit*. But where land is extended under an *elegit*, no other writ of execution but an *elegit* can be sued out against the defendant, unless the plaintiff be evicted from the lands extended, or the *elegit* be ineffective or void.

The sheriff delivers only legal possession of the lands, or rather a right of entry, and not actual possession; if, therefore, the execution-creditor cannot enter without force, he should proceed by ejectment. As soon as the plaintiff should have fully satisfied his judgment out of the extended value of the land, the defendant may recover his land either by ejectment, *scire facias ad rehabendam terram*, action, or reference to one of the masters of the Court to ascertain the amount of the rents and profits received, and order that, if it appear that the debt, damages, and costs are satisfied, possession shall be delivered to the defendant.

Elementary School, a school at which elementary education is the principal part of the education given, and at which the ordinary payments in respect of the instructions from each scholar do not exceed ninepence a week.—*Elementary Education Act*, 1870, s. 3; *Mortmain and Charitable Uses Act*, 1888, s. 6, subs. 4.

Elimination, the act of banishing or turning out of doors: rejection.

Elinguation, the punishment of cutting out the tongue.

Elisors, electors. In cases of challenge to the sheriff and coroners for partiality, etc., the jury process was directed to two clerks of the Court, or two persons of the county named by the Court, and sworn. Then these *elisors* indifferently name or choose the jury, and their return is final, no challenge being allowed to the array.—*Co. Litt.* 158.

Eloigne, or **Eloine** [fr. *éloigner*, Fr.], to put at a distance; to remove one far from another.—*Cowel.*

Eloignment, removal; sending to a distant place.

Elongata, a return made by a sheriff in replevin, that cattle, etc., are not to be found, or are removed, so that he cannot make deliverance, etc.

Elongatus, a return to a writ *de homine replegiando*, that the man was out of the sheriff's jurisdiction, whereupon a process was issued, called a *capias in withernam*, to imprison the defendant himself without bail or mainprize, until he produced him.

Elvers, fry of eels, for which in the Severn fishery district a close time is fixed by 39 & 40 Vict. c. 34.

Ely [perhaps fr. ἕλος, Gk., a marsh, or *helig*, C. Br., a willow], the ancient city and metropolis of the county of Cambridge.

The Isle of Ely was never a county palatine, but it was a royal franchise, which, however, by 6 & 7 Wm. IV. c. 87, was taken away from the bishop, whose secular authority is now vested in the Crown.

Emancipatio. A solemn act by which a *pater-familias* divests himself of his power over his *filius-familias*, so that the *filius-familias* may become *sui juris*. There are three forms of *emancipatio*. (1) The old emancipation, which was by several *mancipationes*, followed by several enfranchisements. The *mancipatio*, or solemn sale, destroyed the *patria potestas* and put the *filius-familias* in *mancipio*, which was a kind of slavery. The enfranchisement by the purchaser made the *filius-familias sui juris*. As the enfranchiser acquired all rights of patronage, the father, on occasion of the last *mancipatio*, added the trust-clause (*fiducia contracta*), i.e., an express condition that the purchaser should remancipate the *filius-familias* to the *pater-familias*, so that having ceased to be a *pater-familias*, and being only an ordinary purchaser, he might himself enfranchise his child, and so acquire the rights of patronage.

(2) The *Anastasian* emancipation, introduced by Anastasius. It consisted in obtaining an imperial rescript, authorising the emancipation, which was to be registered with the proper officer. In this way a *filius-*

familias might be emancipated in his absence, which could not be done by the old form *per æs et libram*, since the purchaser had to lay hold of the thing.

(3) The *Justinian* emancipation, a mere declaration of the *pater-familias* before the magistrate, no leave being required for the purpose (*recta via*).—*Sand. Just.*, 7th ed., xl. & 51.

Embargo [fr. *embargar*, Sp., a prohibition to pass], a stop, arrest, or detention of ships; a prohibition imposed in time of war by a belligerent state upon merchant ships against their leaving port for a time specified.

Embassador. See AMBASSADOR.

Embassage, or **Embassy**, the message or commission given by a sovereign or state to a minister, called an ambassador, empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

Embezzlement, the appropriation to his own use by a servant or clerk of money or chattels received by him for and on account of his master or employer. Embezzlement differs from larceny in this, that in the former the property misappropriated is not at the time in the actual or legal possession of the owner, whilst in the latter it is. The distinctions between larceny and embezzlement are often extremely nice and subtle; and it is sometimes difficult to say under which head the offence ranges. Unless the offender is a clerk or a servant, whose business it is to receive money for his master, he is not guilty of embezzlement. But if he have been employed to receive it in a single instance, he need not be a general servant. By 31 & 32 Vict. c. 116, partners stealing or embezzling money, etc., belonging to the co-partnership may be convicted and punished as if they had not been such partners.

Embezzlement is a felony punishable by penal servitude or imprisonment, and in the case of a male under the age of sixteen by whipping in addition to imprisonment (24 & 25 Vict. c. 96, s. 68).

In the same indictment any number of distinct acts of embezzlement, not exceeding three, committed against the same employer, may be charged if committed within the space of six months from the first to the last act (s. 71). A person indicted for embezzlement may be found guilty of larceny if the evidence shows larceny, and a person indicted for larceny may be found guilty of embezzlement if the evidence shows embezzlement (s. 72). See *Russell on Crimes*.

Emblements [fr. *emblavance de bled*, O. Fr., corn sprung or put above ground], the growing crops of those vegetable productions of the soil which are annually produced by the labour of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although being affixed to the soil, they might for some purposes be considered, whilst growing, as part of the realty.

If a tenant for life or *pur autre vie* die, his executor or administrator is entitled to emblements, for the estate was determined by the act of God; and it is a maxim in the law that *actus Dei nemini facit injuriam*. The advantages of emblements are extended to parochial clergy by 28 Hen. VIII. c. 11, but a parson who resigns his living, or forfeits it by his own act, is not entitled to emblements, although his lessee is. By devise, the devisee may, without express words, be entitled to the growing crops. But a legatee of the goods, stock, and movables on a farm, is entitled to growing corn in preference as well to the devisee of the land as to the executor. So, a tenant at will or sufferance, the duration of whose tenancy is uncertain, is, if the lessor suddenly determine the tenancy, entitled to emblements. And, at common law, *fructus industriales*, as growing corn and other annual produce, which would go to the executor upon death, may be taken in execution; but the appraisement and sale thereof are regulated by statute; and, by statute, growing crops may be distrained upon, and sold when ripe. But a crop of *natural* grass growing at the time of the death of a tenant for life, and although fit to cut for hay, does not belong to his executor, but goes to the remainder-man.

It is provided by statute 14 & 15 Vict. c. 25, s. 1, that 'where the tenancy of any farm or lands held by a tenant at rack-rent shall determine by the death or cessor of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to occupy such farm or lands until the expiration of the then current year of his tenancy.'

Emblers de gentz [Fr.], a stealing from the people. The phrase occurs in our old rolls of parliament—'Whereas divers murders, *emblers de gentz*, and robberies are committed,' etc.—*Rot. Parl.*, 21 *Edw. III.* n. 62.

Embracecor [fr. *embrasour*, Fr.], he that when a matter is in trial between party and party comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labours the jury, or stands in the court to survey

and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter.—19 *Hen. VII.* c. 13; *Termes de la Ley.* But counsel, solicitors, etc., may speak in the case for their clients and not be embraceors.

Embracery, an attempt to influence a jury corruptly in favour of one party in a trial, by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for this misdemeanour in the person embracing and the juror embraced is, by the common law, and also by statute 6 Geo. IV. c. 50, s. 61, fine and imprisonment.

Embring days [fr. *embers, cineres,* Lat., because our ancestors, when they fasted, sat in ashes, or strewed them on their heads], those days which the ancient fathers called *quatuor tempora jejunii,* are of great antiquity in the church; they are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood Day, in September, and St. Lucy's Day, about the middle of December.—*Brit.* c. liii. Our almanacs call the weeks in which they fall the Ember-weeks, and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sunday next after the Ember-weeks for the solemn times of ordination; though the bishops, if they please, may ordain on any Sunday or holiday.—*Encyc. Lond.; Wheat. Com. Pr.*

Emendals, an old word made use of in the accounts of the society of the Inner Temple; where so much in *emendals* at the foot of an account on the balance thereof, signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions.—*Spelm.*

Emendare, to make amends for any crime, or trespass committed. And a capital crime, not to be atoned by fine, was said to be *inemendabile.*—*Leg. Canut.* 2.

Emendatio, the power of amending and correcting abuses, according to stated rules and measures.

Emergent year, the epoch or date whence any people begin to compute their time.

Emigration Commissioners. See 18 & 19 Vict. c. 119, s. 6; and see PASSENGER ACTS.

Emigration of Paupers. See 4 & 5 Wm. IV. c. 76, s. 62; 7 & 8 Vict. c. 101, s. 29; 11 & 12 Vict. c. 110, s. 5; 12 & 13 Vict. c. 103, s. 20; 13 & 14 Vict. c. 101, s. 4.

Eminence, an honorary title given to cardinals. They were called *illustrissimi* and *reverendissimi* until the pontificate of Urban VIII.

Eminent domain, the right which a government retains over the estates of individuals to resume them for public use.

Emissary, a person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favourable to his employer.

Empalement, a mode of inflicting punishment, by thrusting a sharp pole up the fundament.—*Encyc. Lond.*

Empannel [fr. *panne,* Fr.], the writing or entering by the sheriff, on a parchment schedule or roll of paper, the names of a jury summoned by him.—*Cowel.*

Emparlance. See IMPARLANCE.

Emperor [fr. *empereur,* Fr., *imperator,* Lat.], a sovereign prince who bears rule over large kingdoms and territories; a monarch of title and dignity supposed to be superior to a king. The title of Emperor of the French was assumed by Napoleon I., and was again assumed by Napoleon III. The sovereign of Russia is also styled emperor. The present Queen of England is Empress of India. See 39 Vict. c. 10. King Edgar, in an old charter, styles himself *Imperator.* In 1870 the King of Prussia acquired the title of Emperor of Germany.

Emphyteusis, the *jus emphyteuticarium,* or as it is more generally called *emphyteusis,* was the right of enjoying all the fruits, and disposing at pleasure of the property of another, subject to the payment of a yearly rent (*pensio* or *canon*) to the owner. Formerly the lands of the Roman municipalities, or of the college of priests, used to be let for different terms of years, sometimes for a short term, such as that of five years, sometimes for a term amounting almost to a perpetuity, under the name of *agri vectigales* (Gai. iii. 145). Afterwards the lands of private individuals were let in a similar manner, and were also comprehended under the term *agri vectigales.* The emperors let their patrimonial lands in a similar way, and these lands so let were termed *emphyteuticarii* (C. xi. 58, 61), a name arising from there being a new ownership, or what almost amounted to an ownership, engrafted (ἐν φυτεύω) on the real *dominion.* Either shortly before or in the time of Justinian, the two rights, that of the *ager vectigalis,* and that of *emphyteusis,* were united under the common name of *emphyteusis,* and subjected to particular regulations. Both lands and buildings could be subjected to *emphyteusis* (Nov. vii. 3, 1, 2). The *emphyteuta,* as the person who enjoyed the right was termed, besides enjoying all the rights of usufruct, could dispose of the thing, or rather of his rights over it, in any way he

pleased (Nov. vii. 3, 2); he could create a servitude over it or mortgage it (D. xiii. 7, 16, 2); he had a real action (which, however, was said to be a *utilis vindicatio*, because he was not the owner, but only in the place of one) to defend or assert his rights; which at his death went to his heirs (Nov. vii. 3).

He was obliged to pay his *pensio* under any circumstances, whether he actually benefited by his *emphyteusis* or not, because the payment of rent was an acknowledgment of the title of the *dominus*. He was also bound to use the thing over which his right extended, so that it was not deteriorated in value at the time his right expired (Nov. vii. 3, 2).—*Sand. Just.*, 7th ed., 134, 371.

Empire, the dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends imperial power; supreme dominion; sovereign command.

Empiric, a practitioner in medicine or surgery, who proceeds on *experience only* without science or legal qualification; a quack.

Emplead, to indict; to prefer a charge against; to accuse.

Employers and Workmen. See MASTER AND SERVANT.

Emporium [fr. ἐμπόριον, Gk., a trading-place], a place for wholesale trade in commodities carried by sea.

Emptor, a buyer. See CAVEAT EMPTOR.

Enabling statute, 32 Hen. VIII. c. 28, A.D. 1540. By the Common Law all persons may make leases to endure so long as their interests in the land continue, but no longer. This statute enabled, first, a tenant-in-tail to make a lease for three lives, or twenty-one years, to bind his issue. Secondly, a husband seised in right of his wife in fee-simple or fee-tail to make a similar lease to bind his wife and her heirs, provided she joined therein. Thirdly, ecclesiastical persons (except parsons and vicars) seised of an estate of fee-simple in right of their churches to make leases to bind their successors. This act is repealed by the Settled Estates Act, 1856, 19 & 20 Vict. c. 120, s. 35. See SETTLED LAND, except so far as relates to leases made by persons having an estate in the right of their churches; and even as regards such leases it has been practically superseded by the Ecclesiastical Leasing Act, 1842, and similar acts.

Enach, the satisfaction for a crime; the recompense for a fault.—*Skene*.

Enact, to act, perform, or effect; to establish by law; to decree.

Enbrever, to write down in short.—*Brit.* 56.

Encheason [old law, Fr.], cause; occasion. —*Cowel; Bailey*.

Encroachment. An unlawful gaining upon the possession of a neighbour.

Endemic Disease. A disease of a chronic character; the Public Health Act, 1875, s. 134, empowers the Local Government Board to make regulations to prevent the spreading of any formidable epidemic, endemic, or infectious disease.

Endenzie, or **Endenizen**, to make free; to enfranchise.

Endorsement. See INDORSEMENT.

Endowed Schools. Schools wholly or partly maintained out of an endowment. The Endowed Schools Acts are 23 Vict. c. 11; 31 & 32 Vict. c. 32; 32 & 33 Vict. c. 56; 36 & 37 Vict. c. 87; 38 & 39 Vict. c. 29; and 42 & 43 Vict. c. 66; since which statute their temporary provisions have been continued by Annual Expiring Laws Continuance Acts. The principal Act is that of 1869, 32 & 33 Vict. c. 56, which provided for the re-organisation of Endowed Schools generally (excepting those subject to the Public Schools Act, 1868, as to which see PUBLIC SCHOOLS) through the medium of 'schemes' to be framed by the 'Endowed Schools Commissioners,' whose powers were transferred by the Act of 1874, 37 & 38 Vict. c. 87, to the Charity Commissioners. See also GRAMMAR SCHOOLS.

Endowed Charities Act, 23 & 24 Vict. c. 136. See CHARITABLE TRUSTS.

Endowment, wealth applied to any person or use. The assuring dower to a woman; the setting forth a sufficient portion for a vicar towards his perpetual maintenance, when the benefice is appropriated; the creation of a perpetual provision out of lands or money for any institution or person.

En exchange il covient que les estates soient égales. Co. Litt. 50.—(In an exchange it is desirable that the estates be equal.)

Enfeoffment, the act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

Enfranchisement, making free; used (1) of the newly conferring, as by the Reform Act, 1832, a right to vote at a Parliamentary election; and (2) of the turning copyholds into freeholds, as to which see COPYHOLD.

Engine. As to malicious injuries to engines and machinery, see 24 & 25 Vict. c. 97, ss. 11, 14, 15; and as to placing wood, etc., on any railway with intent to obstruct or overthrow any engine, see s. 35. See 8 Vict. c. 20, s. 116.

Englecery, or **Englescherie**, or **Englishery** [fr. *Engleceria*, Lat.], the being an Englishman.—14 *Edw. III.* st. 1, c. 4.

English information. A proceeding in the

Court of Exchequer in matters of revenue. See 28 & 29 Vict. c. 104. See EXCHEQUER INFORMATION.

Engravings Copyright Acts. See COPYRIGHT.

Engross, to copy in a fair and clerkly hand.

Engrosser, he that purchases large quantities of any commodity in order to sell it at a high price.—7 & 8 *Vict. c.* 24, repealed.

Enicia pars. See ESNECY.

Enitia pars semper præferenda est propter privilegium ætatis. Co. Litt. 166.—(The part of the elder sister is always to be preferred on account of the privilege of age.)

Enlarge (*v.a.*), to extend time, as to extend the time within which a rule is returnable, or an appeal may be brought, or an award made.

Enlarger l'estate, a species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee.—1 *Steph. Com.*

Enlarging Statutes. See ACT OF PARLIAMENT.

Enpleet, anciently used for implead.—*Cowel.*

Enquest. See INQUEST.

Enquiry. See INQUIRY.

Enrolment, register, record; writing in which anything is recorded.

By the Statute of Enrolments, 27 Hen. VIII. c. 16, every bargain and sale of a freehold interest is to be enrolled in Chancery within six [lunar] months after its date.

No assurance by a tenant-in-tail, under the 3 & 4 Wm. IV. c. 74, will have any operation unless it be enrolled in the Court of Chancery within six calendar months after its execution, which enrolment will be sufficient of itself, even where the conveyance is by bargain and sale, within the Statute of Enrolments. This provision does not extend to copyholds, the enrolment then being on the court-rolls of the manor.

If a party to a suit in Equity, who had obtained a decree or order, was desirous of preventing a rehearing of the cause before the judge pronouncing the same, or of preventing an appeal to the Lord Chancellor, or Lords Justices of Appeal, it must have been enrolled. So also where a decree was pronounced either by the Master of the Rolls, or one of the Vice-Chancellors, and the party, instead of appealing to the Lord Chancellor or Lords Justices of Appeal, was desirous of appealing at once to the House of Lords, the decree must first have been enrolled. The effect of enrolling a decree of the Lord Chancellor was to prevent its being reheard by him. After a decree was enrolled, it could only be reversed or altered either by appeal to the House of Lords or by bill of review. It might be enrolled immediately after it had been passed and entered, unless a *caveat* had been entered, and then, if the party entering it did not present his petition of appeal or rehearing within twenty-eight days, the enrolment might be perfected. By Consol. Ord. 1860, XXIII., r. 24, the expenses of enrolment of decrees and orders were diminished: and by Ord. XXII., r. 16, the defendant had power to vacate the enrolment under certain circumstances; but the effect of the Judicature Act is practically to abolish enrolment. See CHARITABLE TRUSTS.

Ens, being, or existence.

Enschedule, to insert in a list, account, or writing.

Ensient, or **Enseint,** the being with child.—*Old Law Fr.*

Entail [fr. *feudum talliatum,* Lat.; *entaillé,* Fr., from *tailler,* to cut], an estate settled with regard to the rule of its descent. See TAIL.

Entailed money, money directed to be invested in realty to be entailed. 3 & 4 Wm. IV. c. 74, ss. 70, 71, 72. See TAIL.

Entendment. See INTENDMENT.

Enter (*v. a.*), to enrol, to commence officially, to inscribe upon the records of a Court, or upon an official list. See also ENTRY.

Entering short. When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to 'enter them short,' as it is called, i.e., to note down the receipt of their bills, their amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. See *Giles* v. *Perkins,* 9 *East,* 13. Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them.

Enterpleader. See INTERPLEADER.

Entire contract, a contract wherein everything to be done on the one side is the consideration for everything to be done on the other.

Entire tenancy, a sole possession by one person, called severalty, which is contrary to several tenancy where a joint or common possession is in one or more.

Entireties, *Tenancy by*. Where an estate is conveyed or devised to a man and his wife *during coverture*, they are said to be tenants by entireties, that is, each is said to be seised of the *whole estate*, and neither of a part. The consequence is, that the husband's conveyance alone will not have any effect against his wife him surviving. The husband being seised of the whole estate during coverture, either in his own right or *jure uxoris*, can of course part with that interest; but to make a complete conveyance of all the interests held in entirety the wife must concur. Tenants by entireties are seised *per tout*, and not *per my et per tout*. This species of tenancy seems to be an exception to the rule that the husband and wife are one person in law; if they are to be considered as one person, the husband should be able to convey alone, which in this case he cannot do.—*Watk. Conv.* 170.

Entirety, the whole; completeness.

Entrepôt [Fr.], a warehouse or magazine for the deposit of goods.

Entry, the depositing of a document in the proper office or place; actual entry on land is necessary to constitute a seisin in deed, and is necessary in certain cases, as, e.g., to perfect a common-law lease.

When a person without any right has taken possession of land, the party entitled may make a formal but peaceable entry, which is quite an extrajudicial and summary remedy, on such lands, declaring that thereby he takes possession, which notorious act of ownership is equivalent to a feodal investiture by the lord; or he may enter on any part of it in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries for the notoriety of such entry and claim. This remedy by entry takes place in three only of the five species of ouster—viz., abatement, intrusion, and disseisin; for as in these the original entry of the wrongdoer was unlawful, they may therefore be remedied by the mere entry of him who has right. But upon a discontinuance or deforcement, the owner of the estate cannot enter, but is driven to his action; for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant.—1 *Inst.* 57.

An action must be brought within twelve (formerly twenty) years next after a right of entry first accrued, ten (formerly six) years being allowed after the determination of disabilities, provided it be not more than thirty (formerly forty) years in the whole. See Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57, repealing 3 & 4 Wm. IV. c. 27, s. 2. All writs of entry and real actions by which lands might have been formerly recovered, except dower, dower *unde nihil habet*, and *quare impedit*, are abolished.—3 & 4 *Wm. IV.* c. 27. See DOWER.

By 8 & 9 Vict. c. 106, s. 6. a right of entry may be disposed of by deed.

In Scotch law, it refers to the acknowledgment of the title of the heir, etc., to be admitted by the superior.

As to a burglarious entry, see BURGLARY.

In commerce, the act of setting down in an account-book the particulars of business transacted. Book-keeping is performed either by single or double entry.

Entry, Bill of. See BILL OF ENTRY.

Enumerators. See CENSUS.

Enure, to take place or to be available.

Envoy, a diplomatic agent sent by one state to another.

Eôdem ligamine quo ligatum est dissolvitur. Co. Litt. 212 *b.*—(A bond is released by the same formalities with which it is contracted.)

Eôdem modô quo quid constituitur eodem modo destruitur. 6 Co. 53.—(In the same way in which anything is constituted, in that way it is destroyed.)

Eodorbrice [fr. *eoder*, Sax., a hedge, and *brice*, broken], hedge-breaking.—*Leg. Alf.* c. 45.

Eo nomine, by that very name.

Eoth, an oath.

Epidemic Disease. A disease of an acute character. See ENDEMIC DISEASE.

Epimenia, expenses or gifts.—*Blount.*

Epiphany [fr. τὰ ἐπιφάνια, Gk.], a Christian festival, otherwise called the Manifestation of Christ to the Gentiles, observed on the 6th of January, in honour of the appearance of the star to the three magi, or wise men, who came to adore the Messiah, and bring Him presents. It is commonly called Twelfth-day. —*Encyc. Lond.*

Episcopacy [fr. ἐπίσκοπος, Gk.], the office of overlooking or overseeing; the office of a bishop who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.

Episcopal and Capitular Estates Management. See 14 & 15 Vict. c. 104, continued, explained, and amended by 16 & 17 Vict. c. 57, ss. 1, 4, etc.; 17 & 18 Vict. c. 116; 19 & 20 Vict. c. 74; 20 & 21 Vict. c. 74; 22 & 23 Vict. c. 46; 23 & 24 Vict. c. 124; and 32 & 33 Vict. c. 85.

Episcopalia, or **Onera Episcopalia**, syno-

dals or other customary payments from the clergy to their bishop or diocesan, which were formerly collected by the rural deans, and by them transmitted to the bishop.—*Mon. Angl.* t. iii., p. 61.

Episcopalian, a dissentient, in Scotland, from the Established Presbyterian Church, and an adherent of the Reformed Catholic Church deriving apostolic succession from the apostles. The clergy of this kind are now placed nearly on a footing with the clergy of the Church of England when in this country. See 27 & 28 Vict. c. 94.

Episcopate, a bishopric.

Episcopus alterius mandato quam regis non tenetur obtemperare. Co. Litt. 134.—(A bishop need not obey any mandate save the king's.)

Episcopus teneat placitum, in curiâ Christianitatis de iis quæ merè sunt spiritualia. 12 Co. 44.—(A bishop may hold plea in a Court Christian, of things merely spiritual.)

Episcopus puerorum. It was an old custom that upon certain feasts some lay person should plait his hair, and put on the garments of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called *bishop of the boys*; and this custom obtained here long after several constitutions were made to abolish it.—*Blount.* Such an officer is mentioned in the statutes of some of the cathedrals of the old foundation in England.

Epoch, or **Epocha** [fr. ἐποχή, Gk., a pause], the time at which a new computation is begun; the time whence dates are numbered.—*Encyc. Lond.*

Epping Forest. By the 34 & 35 Vict. c. 93, certain commissioners were appointed to inquire as to encroachments on forestal and common rights. See also 35 & 36 Vict. c. 95, 36 & 37 Vict. c. 5, and 38 Vict. c. 6.

Equerry, an officer of state under the master of the horse.

Equitable Assets. See Assets.

Equitable Defences at Common Law. 'The Common Law Procedure Act, 1854' (ss. 83—86), enabled any defendant to plead the facts which would entitle him, if judgment were obtained against him, to relief in Equity from such judgment on equitable grounds, by way of defence, and also enabled the plaintiff to avoid such defence by a replication upon equitable grounds. A plea on equitable grounds was good at Law only where an absolute and unconditional injunction would be granted in Equity.

It is now provided by the Judicature Act, 1873, s. 24, that in all actions in any Division of the Supreme Court, matters which would have entitled a party to relief in the Court of Chancery, shall be taken cognizance of, and all equitable rights to be given effect to.

Equitable Estates, one of the three kinds of property in lands and tenements; the other two being legal property and customary property.

That is properly an equitable estate or interest for which a Court of Equity affords the only remedy: and of this nature especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the Statute of Uses. The rest are equities of redemption, constructive trusts, and all equitable charges.

Equitable Lien. See Lien.

Equitable Mortgage. The following mortgages are equitable.

(1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority.

(2) Where it is an equity of redemption, which is merely a right to bring an action in the Chancery Division to redeem the estate.

(3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land.

(4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate.

This transaction, which appears to be a judicial repeal of the Statute of Frauds, 29 Car. II. c. 3, s. 4, is extensively resorted to, and is known in practice as an equitable mortgage by deposit of title-deeds.

An equitable mortgage being a contract for a mortgage, the mortgagee might file a bill or claim in Equity, either for a legal mortgage, a foreclosure and conveyance, or a sale. And may now bring an action for the same purpose in the Chancery Division of the High Court (Jud. Act, 1873, s. 34 (3)).

Equitable mortgages are amongst the documents which must be stamped within 30 days after execution, by virtue of s. 15 of the Stamp Act, 1891, re-enacting s. 18 of the Customs and Inland Revenue Act, 1888. See Stamp Duties.

For further information on this subject, consult *Coote on Mortgages* and see *Russel* v. *Russel*, 1 *White & Tudor's Lead. Cas.*

Equitable Waste. See Waste.

Equity [fr. *æquitas*, Lat.]. There is some confusion as to the meaning of Equity, as a scheme of jurisprudence, distinct from Law. 'Equity' is an equivocal term: the difficulty

lies in drawing the dividing lines between the several senses in which it is used. Its three leading senses are distinguished thus :—

(1) Taken broadly and philosophically, Equity means to do to all men as we would they should do unto us—by the Justinian Pandects, *honeste vivere, alterum non lædere, suum cuique tribuere.* It is clear that human tribunals cannot cope with so wide a range of duties.

(2) Taken in a less universal sense, Equity is used in contradistinction to strict law. This is *Moral* Equity, which should be the genius of every kind of human jurisprudence; since it expounds and limits the language of the positive laws, and construes them not according to their strict letter, but rather in their reasonable and benignant spirit.

Aristotle, in his discussion concerning Moral Equity, *Ethics*, b. v., c. x., calls it the correction of mere law, which (being altogether universal, and it not being possible to treat a subject exhaustively, when speaking universally) takes the most obvious case, from an impossibility for providing for every possible predicament in express words. Now, this fault is not in the Law, nor the legislature, but in the nature of the thing itself; for the subject matter of human conduct is altogether of this description. When, therefore, the Law speaks universally, and a matter happens somewhat differing from the case provided for, then it is proper, where the legislator falls short, and has erred from speaking generally, to fill up the deficiency, as the legislator would himself direct if he were present, or as he would have included in the Law if he had anticipated the matter.

(3) But it is in neither of these senses that Equity is to be understood as the substantial justice which has been expounded by our Courts of Chancery. It is here expected in a more limited and technical sense, and may be called *Municipal* Equity, and described as the system of supplemental law administered in Chancery, and founded upon defined rules, recorded precedents, and established principles, to which it closely adheres; the judges, however, liberally expounding and developing them, in order to meet novel exigencies. While it aims to assist the defects of the Common Law, by extending relief to those rights of property which the strict law does not recognize, and by giving more ample and distributive redress than the ordinary tribunals afford, it by no means either controls, mitigates, or supersedes the Common Law, but rather guides itself by its analogies, and does not assume any power to subvert its doctrines. This is amply shown by two well-known maxims of the Court of Chancery, viz., *Æquitas sequitur legem*, and *Where the Equities are equal, the Common Law must prevail.*

The grand characteristic of Municipal Equity is displayed in the nature and extent of its redress. Not content, as the Common Law generally is, to adjudicate strictly and absolutely *in rem*, i.e., upon the transaction itself, as it is presented by the litigants, Equity insists upon the conscientious obligations of the suitors; and by adjudicating *in personam*, compels an actual completion of the matter intended to be accomplished by the parties adjusting, qualifying, and restraining their several and sometimes conflicting rights, duties, and interests. It also grapples with anticipated injuries, by preventing the perpetration of meditated or threatened mischief; a very wholesome prerogative, since an interdictive power is more valuable, and frequently of much greater efficacy, than a merely compensative or punitory function.

Large powers are now given to all branches of the Supreme Court to administer Equity, though many matters of equitable jurisdiction are still left to the Chancery Division of the High Court in the first instance (Jud. Act, 1873, ss. 24, 25, 34). See CHANCERY.

Equity of Redemption. A mortgagee, although he has become absolute owner of the legal estate in the pledged property, on account of the breach of the condition for repayment of the loan within the strict time, yet is compelled to reconvey the legal estate to the mortgagor, who applies to Equity to redeem it before foreclosure, and within twelve years of the last written acknowledgment (Real Prop. Limit. Act, 1874, s. 7), on payment of the principal, interest, and costs, Equity treating the breach of the condition as a penalty which it abhors; and the retention for the mortgagee's own benefit of that which was intended simply as a pledge, as contrary to substantial justice.

An equity of redemption may be mortgaged *toties quoties*, until it is barred by a decree in Equity, and each incumbrancer of it has preference according to his priority in time.

The following dangers and disadvantages attend this species of security :—

(1) A prior mortgagee may be postponed to a subsequent mortgagee, who, having advanced the loan with notice of such prior mortgage, afterwards acquires the legal estate. See TACKING, which, though abolished by 37 & 38 Vict. c. 78, s. 7, was revived by 38 & 39 Vict. c. 87, s. 129.

(2) The first mortgagee may, either before or after the mortgage of the equity of re-

demption, in the absence of any notice of it, make further advances, and tack them to his first security, to the displacement of the mesne mortgage. In order to guard against this disparagement, the mortgagee of an equity of redemption should not only inquire of the first mortgagee the amount of his loan, but must give him express notice of his own advance. And notice of it should be put on the principal title-deed, in order to avoid the chance of the mortgagor redeeming the first mortgage, and conveying the legal estate to a person without notice of the mesne mortgage, who would thus gain a preference to such unintimated equitable mortgage.

(3) The mortgagor may have secretly effected a prior charge on the equity of redemption. And although the perpetration of so gross a fraud would forfeit his equity of redemption pursuant to 4 & 5 Wm. III. c. 16, yet this will be small consolation to such a mortgagee.

(4) Such a mortgagee has not any legal remedy, so as to affect the estate itself, but only equitable relief. See MORTGAGE and FORECLOSURE.

Equity to a Settlement (Wife's). Prior to the Married Women's Property Acts (see MARRIED WOMEN'S PROPERTY), the law permitted a husband to possess himself absolutely of the whole of his wife's personal property and the profits of her realty; but as in many cases he might have it in his power to alien all the property to which he is entitled *jure mariti*, or upon his becoming bankrupt or insolvent it would vest in his trustee for the benefit of his creditors, and thus his wife, however great may have been her fortune, might, with her children, be left destitute; Equity compelled him, whenever he or any person claiming in his right was obliged to sue for the recovery of the wife's property, to make a settlement of some portion of it, the rule being to settle one-half in ordinary cases, but the whole if the husband were insolvent or had deserted his wife, or there had been a dissolution of marriage on the ground of his adultery.—*Barrow* v. *Barrow*, 5 *De G. M. & G.* 782; *Morgan* v. *Morgan*, 2 *Eq. Rep.* 1270 (1854). The Married Women's Property Act, 1882, by vesting a wife's property in herself, has rendered the exercise of this jurisdiction unnecessary.

Equus coopertus. A horse equipped with saddle and furniture. See *Du Cange*.

Era. See ÆRA.

Ernes, the loose scattered ears of corn that are left on the ground after the binding.—*Kennet's Glos.*

Errant [itinerant], applied to justices on circuit, and bailiffs at large, etc. See EYRE.

Erraticum, a waif or stray.—*Cowel.*

Error. The name for recourse to the Court of Exchequer Chamber from any of the inferior tribunals, by reason of defects in the record, or to the House of Lords from the Exchequer Chamber; or to the Queen's Bench in criminal cases (*vide infra*). Proceedings in error are now abolished by the Jud. Act, 1875, Order LVIII., r. 1, except in criminal cases, appeal being substituted in civil cases. See APPEAL, COURT OF.

As to error in criminal cases:—

After a judgment given against a prisoner, either at sessions or the assizes, if there be a substantial defect in the indictment, or error apparent on the record, such judgment may be reversed by the Queen's Bench. But it is necessary previously to obtain the Attorney-General's *fiat*, which in misdemeanours, on sufficient cause shown, is granted as a matter of course; but in felonies, it is granted only *ex merâ gratiâ*. The Attorney-General may confess error, and so consent to a reversal of the judgment. See 8 & 9 Vict. c. 68; 11 & 12 Vict. c. 78; and 16 & 17 Vict. c. 32. See also REVERSAL OF JUDGMENT.

Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error. 2 Co. 73.—(Varnished error is in many things more probable than naked truth; and very frequently error conquers truth by reasoning.)

Error nominis, a mistake of detail in the name of a person; used in contradistinction to error *de personâ*, a mistake as to identity. See *Reg.* v. *Mellor*, *D. & B.* 468.

Error, qui non resistitur, approbatur.—(An error which if not resisted, is approved.)

Errores ad sua principia referre, est refellere. 3 Inst. 15.—(To refer errors to their principles, is to refute them.)

Errores scribentis nocere non debent. Jenk. Cent. 324.—(The mistakes of the writer ought not to harm.)

Errors excepted, a phrase appended to an account stated, in order to excuse slight mistakes or oversights.

Erthmiotum, a meeting of the neighbourhood to compromise differences amongst themselves; a court held on the boundary of two lands.—*Leg. Hen. I.* c. 57.

Erubescit lex filios castigare parentes. 8 Co. 116.—(The law blushes when children correct their parents.)

Esbrancatura, cutting off branches or boughs in forests, etc.—*Hov.* 784.

Escaldare, to scald. It is said that to *scald hogs* was one of our ancient tenures in serjeanty.—*Lib. Rub. Scaccar. M.S.* 137.

Escambio [fr. *cambier*, Span., to change], a license granted to make over bills of exchange to another beyond the sea. Abolished by 59 Geo. III. c. 49, s. 11.

Escape [fr. *échapper*, Fr., to fly from], a violent or private evasion out of some lawful restraint; as where a man is arrested or imprisoned, and gets away before he is delivered by due course of law. Escapes are either in civil or criminal cases.

(1) *Civil.* The abolition of imprisonment for debt has rendered this all but obsolete, and the sheriff is expressly discharged from any liability by s. 31 of the Prison Act, 1877, repealed and re-enacted by s. 16, subs. 2, and s. 39 of the Sheriffs Act, 1887. They are either *voluntary*, by the express consent of the keeper, after which he never can take his prisoner again (though the plaintiff may retake him at any time), but the sheriff had to answer for the debt, and he had no remedy over against the person escaping; or, *negligent*, where a prisoner escapes without his keeper's knowledge or consent, and then upon fresh pursuit the defendant may be retaken, even on a Sunday, and the sheriff was excused, if he had him again, before any action brought against himself for the escape.

(2) *Criminal.* An escape of a person lawfully arrested for felony or misdemeanour is an offence against public justice, and punishable by fine or imprisonment. Officers and others negligently permitting a felon to escape are punishable by fine, but voluntarily permitting an escape amounts to the same kind of offence, and is punishable in the same degree as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; although, before the conviction of the principal party, the officer thus neglecting his duty may be fined and imprisoned for a misdemeanour. See 1 Edw. I. st. 2; 16 Geo. II. c. 31; 1 & 2 Geo. IV. c. 88: 4 Geo. IV. c. 64; 5 Geo. IV. c. 84, s. 22—4; and 4 & 5 Wm. IV. c. 67.

Escape-warrant, a process addressed to all sheriffs, etc., throughout England, to retake an escaped prisoner, even on a Sunday, and commit him to proper custody.—1 *Anne*, c. 16.

Escapio quietus, delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land.—*Jacob.*

Escapium, that which comes by chance or accident.—*Cowel.*

Esceppa, a measure of corn.—*Cowel.*

Escheat [*eschet* or *échet*, formed from the word *eschoir* or *échoir*, Fr., to happen], a species of reversion: it is a fruit of seigniory, the Crown or lord of the fee, from whom or from whose ancestor the estate was originally derived, taking it as *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family.

The title of the Crown is ascertained by inquiry regulated by rules under the Escheat Procedure Act, 1887, 50 & 51 Vict. c. 53, which repeals, as practically inoperative, the numerous statutes from 29 Edw. I. by which officers called 'escheators' were authorised to hold such inquiries.

It differs from a forfeiture (now abolished for treason or felony by 33 & 34 Vict. c. 23), in that the latter is a penalty for a crime personal to the offender, of which the Crown is entitled to take advantage by virtue of its prerogative; while an escheat results from tenure only, and arises from an obstruction in the course of descent; it originated in feudalism, and respects the intestate's succession. So, while forfeiture affects the rents and profits only, escheat operates on the inheritance.

Escheat arises, then, from default of heirs, when the tenant dies without any lawful and natural-born relations on the part of any of his ancestors, or when he dies without any lawful and natural-born relations on the part of those ancestors from whom the estate descended, or where the intestate tenant, having been a bastard, does not leave any lineal descendants, since he cannot have any collateral descendants.

It arose from corruption of blood (now abolished by 33 & 34 Vict. c. 23), when the tenant had been convicted of treason or felony.

The statute-law, by 13 & 14 Vict. c. 60, has made an exception to the general law of escheat in the case of a trustee or mortgagee dying intestate and heirless, for the protection of the beneficiaries or mortgagor; and by the Intestates Estates Act, 1884, 47 & 48 Vict. c. 71, s. 4, it is provided that equitable estates and estates in incorporeal hereditaments (which prior to that act did not escheat) shall be subject to the same law of escheat as legal estates in corporeal hereditaments.

The Intestates' Estates Act, 1884, also, by s. 6, provides for the waiver by the Crown of its right by escheat in favour of the family of the intestate, or of any person considered or adopted as part of his family, as pointed out by 59 Geo. IV. c. 94.

Eschaeta derivatur à verbo Gallico eschoir, *quod est accidere, quia accidit domino ex eventu et ex insperato.* Co. Litt. 93.—(Escheat is derived from the French word *eschoir*, which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.)

Escheatæ vulgò dicuntur quæ decidentibus iis quæ de rege tenent cum non existit ratione sanguinis hæres, ad fiscum relabuntur. Co. Litt. 13.—(Those things are commonly called escheats which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.)

Escheator [fr. *escaetor*, Lat.], an officer anciently appointed by the lord treasurer, etc., in every county, to make inquests of titles by escheat, which inquests were to be taken by good and lawful men of the county, impannelled by the sheriff.—4 *Inst.* 225. See ESCHEAT.

Eschecoum, a jury or inquisition.—*Mat. Par.*

Eschipare, to build or equip.—*Du Cange.*

Escot [Fr.], a tax formerly paid in boroughs and corporations towards the support of the community, which is called *scot and lot.*

Escrow, a writing under seal delivered to a third person, to be delivered by him to the person whom it purports to benefit, upon some condition. Upon the performance of the condition it becomes an absolute deed; but if the condition be not performed, it never becomes a deed. It is not delivered as a deed, but as an escrow, i.e., a scrowl or writing which is not to take effect as a deed till the condition be performed.—*Co. Litt.* 36 *a*; 2 *Bl. Com.* 307. See DELIVERY OF DEED.

Escuage [fr. *escu*, Fr., a shield], a pecuniary instead of a military service. This kind of feudal tenure was called *scutagium*, in Latin, or *servitium scuti* (the service of the shield), *scutum* being then a well-known denomination for money.—*Co. Litt.* 68 *b.*

Escurare, to scour or cleanse.—*Cowel.*

Esglise, or **Eglise**, a church.—*Jacob.*

Esketores, robbers or destroyers of other men's lands and fortunes.—*Cowel.*

Eskippamentum, skippage; tackle or ship furniture.—*Cowel.*

Eskipper, to ship.—*Jacob.*

Eskippeson, shipping or passage by sea.—*Cowel.*

Eslisors. See ELISORS.

Esne, a hireling of servile condition.

Esnecy [fr. *æsnesia*, Lat.], a private prerogative allowed to the eldest coparcener, where an estate descends to daughters for want of an heir male, to choose after the inheritance is divided.—*Fleta*, l. 5, c. x.

Esperons. Spurs.—7 *Co. Rep.* 13.

Esplees [fr. *expletiæ*, Lat.], the products of land; as the hay of meadows, herbage of pasture, corn of arable land, rents, services, etc.; also the lands, etc., themselves.—*Termes de la Ley.*

Espousals [fr. *sponsalia*, Lat.; *espouse*, Fr.], the act of contracting or affiancing a man and woman to each other; the ceremony of betrothing.

Esquire [fr. *escuyer*, Fr.; *scutum*, Lat.; σκίτος, Gk., hide of which shields were made and afterwards covered], he who attended a knight in time of war, and carried his shield; whence he was called *escuyer*, in French, and *scutifer* or *armiger*, i.e. armour-bearer, in Latin. No estate, however large, conferred this rank upon its owner.

Esquires may be divided into five classes:

(I.) The younger sons of peers and their eldest sons.

(II.) The eldest sons of knights and their eldest sons.

(III.) The chiefs of ancient families are esquires by prescription.

(IV.) Esquires by creation or office. Such are the heralds and serjeants-at-arms, and some others, who are constituted esquires by receiving a collar of S. S. Judges and other officers of state, justices of the peace, and the higher naval and military officers are designated esquires in their patents and commissions. Doctors in the several faculties, and barristers at law, are also esquires. None of these offices convey gentility to the posterity of the holders.

(V.) The last kind of esquires are those of Knights of the Bath, each of whom appoints three to attend upon him at his installation, and at coronations.

Essartum, woodlands turned into tillage by uprooting the trees and removing the underwood.—*Old Records.*

Essence, that which is indispensable to that of which it is the essence.

Essendi quietum de tolonio, a writ to be quit of toll; it lies for citizens and burgesses of any city or town, who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them.—*Reg. Orig.* 258.

Essoin, Esseigne, Assoign [fr. *essonium*, Lat.; *essoine*, Fr.; *ex*, priv., and *soing*, cura; *ab angustâ curâ, vel labore liberare*, which is a more probable derivation than ἐξομνύοθαι, Gk.; though it signifies to excuse by means of an oath, which is the precise nature of an essoin. See *Spelman*, voc., '*Essoinaire*'], an excuse for him who is summoned to appear and answer to an action, or to perform suit to a court-baron, etc., by reason of sickness or infirmity, or other just cause of absence.

The causes of excuse called *essoins* allowed in the king's court were many. The principal essoin was that *de infirmitate*, which was of two kinds: 1. *De infirmitate veniendi*; 2. *De infirmitate resiantiæ*—of which the first was

afterwards called *de malo veniendi*, the latter *de malo lecti*. See 1 *Reeves*, 115 and 405, for other essoins.

Formerly the first general return day of the term was called the essoin day, because the Court sat to receive essoins; but when essoins were no longer allowed to be cast, i.e., obtained, in personal actions, the Court discontinued such sittings. Still it was considered the essoin day for many purposes, until the 11 Geo. IV. and 1 Wm. IV. c. 70, s. 6, did away with the essoin day for all purposes, as part of the term.—1 *Chit. Arch. Prac.*, 12th ed., 160.

Essoiniator, a person who made an essoin.

Essoins, Statute of, 12 Edw. II., st. 2. See 2 *Reeves*, 303.

Estache [fr. *estacher*, Fr., to fasten], a bridge or stank of stone or timber.—*Cowel.*

Estanques, weirs or kiddles in rivers.

Estate [fr. *status*, Lat.; *état*, Fr.]; the condition and circumstance in which an owner stands with regard to his property. It is used in two senses: (1) technically, as the quantity of interest in realty owned by a person; and (2) popularly, as the realty itself. It is either legal, customary, or equitable.

Blackstone considers legal estates in a threefold view, thus:—

(1) The quantity of interest or duration, divided into—

(A) Freeholds of inheritance, which are subdivided into—

(α) Absolute or fee simple.

(β) Limited fees; which are (a) qualified or base fees, and (b) fees conditional at the common law, afterwards called fees-tail in consequence of the Statute *De Donis*, which may be (i) general or special, (ii) male or female, (iii) given in frank-marriage.

(B) Freeholds not of inheritance, subdivided into—

(α) Conventional, or created by the act of the parties; they are (a) estates for one's own life, (b) estates *pur autre vie*, (c) general grant, without expressing any term at all.

(β) Legal, or created by operation of law; they are (a) tenancy in tail after possibility of issue extinct, (b) tenancy by the courtesy of England, (c) tenancy in dower.

(C) Estates less than freehold subdivided into—

(α) Estates for years.

(β) Estates at will.

(λ) Estates at sufferance.

(D) Estates upon condition, subdivided into—

(α) Estates upon condition implied.

(β) Estates upon condition expressed, and these are either precedent, or subsequent; (a) precedent, which must be performed before an estate can vest or be enlarged; (b) subsequent, by the failure or nonperformance of which an estate already vested is defeated; such are (i) estates held *in vadio*, gage, or pledge, which are of two kinds, *vivum vadium*, living pledge or vifgage, and *mortuum vadium*, dead pledge or mortgage; (ii) estates by statute merchant or statute staple; (iii) estates by *elegit*.

(2) The time of enjoyment, either—

(A) In possession, or

(B) In expectancy, subdivided into—

(α) Remainders created by convention of parties, which are, (a) vested, (b) contingent or executory, (c) cross.

(β) Reversions arising by operation of law.

(3) The number and connection of the tenants; either

(A) Severalty.

(B) Joint-tenancy.

(C) Coparceny.

(D) Tenancy in common.

(E) Entireties—2 *Bl. Com.* cc. vii.—xii.

Estate ad remanentiam, an estate in fee simple.—*Glanv.* l. 7, c. 1.

Estate Clause, an *express* clause in conveyances, passing all the estate, etc., in the property conveyed: now *implied* by virtue of s. 63 of the Conveyancing Act, 1881.

Estates of the Realm, the three branches of the Legislature—The Lords Spiritual, the Lords Temporal, and the Commons. The notion entertained by many, that the three estate of the realm are the King, the Lords, and the Commons, is an error. See *Hallam*, 'Middle Ages,' vol. iii., c. viii., part 3.

Estoppel [fr. *estoupir*, Fr., i.e., *oppilare*, *obstipare*, Lat.], a conclusive admission, which cannot be denied or controverted. It is of three kinds:—

(1) By matter of record, which imports such absolute and incontrovertible verity, that no person against whom it is producible shall be permitted to aver against it. A record concludes the parties thereto, and their privies, whether in blood, in law, or by estate, upon the point adjudged, but not upon any matter collateral or adjudged by inference.—A judgment in an action *in rem* is absolutely binding upon all the world.

(2) By deed. No person can be allowed to dispute his own solemn deed, which is therefore conclusive against him, and those claiming under him, even as to the facts recited in it. The general rule is that an indenture estops all who are parties to it, while a deed-poll only estops the party who executes it, since it is his sole language and act.—*Shep. Touch.* 53.

(3) In *pais*, as that a tenant cannot dispute his landlord's title. See *Duchess of Kingston's case*, 2 *Smi. L. C.*

Estoveria sunt ardendi, arandi, construendi et claudendi. 13 Co. 68.—(Estovers are of firebote, ploughbote, housebote, and hedgebote.)

Estoveriis habendis, a writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

Estovers or **Estouviers** [fr. *estoffeo*, Fr., to furnish, or *festover*, Fr., i.e., *overe*, Lat., to keep warm, cherish, sustain, or defend]. Bote, any kind of sustenance; also a wife's alimony. See COMMON.

Estrays, such valuable animals as are found wandering in a manor or lordship, the owner whereof is not known; in which case the law gives them to the sovereign, and they now most commonly belong to the lord of the manor by special grant from the Crown. But they must be proclaimed in the church and two market towns next adjoining to the place where they are found; and then, if no person claim them, after proclamation and a year and a day passed, they belong to the sovereign or his substitute, without a redemption, even though the owner was a minor or under any other legal incapacity. The doctrine of estrays is only applicable to animals *domitæ naturæ*.—2 *Steph. Com.*

Estreat, the true extract, copy, or note of some original writing or record, and especially of recognizances, fines, amercements, etc., entered on the rolls of a court to be levied by the bailiff or other officer.—*F. N. B.* 57; 3 & 4 *Wm. IV.* c. 99; and 22 & 23 *Vict.* c. 21, s. 28.

Estreciatus, straightened, applied to roads. —*Cowel.*

Estrepe, to make spoils in lands to the damage of another, as of a reversioner, etc.

Estrepement [fr. *estropier*, Fr., to lame; *extirpare*, Lat.], any spoil or waste made by tenant for life upon any lands or woods to the prejudice of him in reversion; also making land barren by continual ploughing. The writ of estrepement was abolished by 3 & 4 Wm. IV. c. 27.

Ethelling, or **Ætheling**. See ADELING.

Etiquette of the profession, the code of honour agreed on by mutual understanding and tacitly accepted by members of the legal profession; especially by the bar. The Attorney-General is the chief authority on questions of this kind.

Evasion, the act of escaping by means of artifice; a trick or subterfuge.

Eves-droppers. See EAVES-DROPPERS.

Eviction [fr. *evinco*, Lat., to overcome], dispossession; also a recovery of land, etc., by form of law. See EJECTMENT.

Evidence, proof, either written or unwritten, of allegations in issue between parties.

The leading rules of evidence are the following:—

(1) The sole object and end of evidence is, to ascertain the truth of the several disputed facts or points in issue; and no evidence ought to be admitted which is not relevant to the issues.

(2) The point in issue is to be proved by the party who asserts the affirmative; according to the maxim *affirmanti non neganti incumbit probatio*. But where one person charges another with a culpable omission or breach of duty, this rule will not apply, for the person who makes the charge is bound to prove it, though it may involve a negative, since it is one of the first principles of justice not to presume that a person has acted illegally till the contrary is proved.

(3) It will be sufficient to prove the substance of the issue.

(4) The best evidence must be given of which the nature of the thing is capable.

(5) Hearsay evidence of a fact is not admissible, with some exceptions. See HEARSAY EVIDENCE.

(6) No person is bound to criminate himself. See comment on the maxim *Nemo tenetur prodere se ipsum*, post.

The mode of taking evidence on a trial in the Common Law Courts differed from that which was usual in the Court of Chancery. It was oral in the former, and by affidavit in the latter. Now, however, that there is one Supreme Court, the ordinary mode of taking evidence is by oral examination of witnesses; but by agreement, or by leave of the Court or a judge, affidavits or depositions may be used (R. S. C. 1883, Ord. XXXVII.), and are very frequently used in the Chancery Division. See *Best*, or *Roscoe*, or *Taylor*, or *Powell on Evidence*, and for a collection of the statutes upon the subject see *Chitty's Statutes*, vol. ii., tit. '*Evidence*.'

Eundo, morando, et redeundo (*in going, remaining, and returning*).

Eunomy [fr. εὐνομία, Gk.], a constitution of good laws.

Every one must be taken to intend that which is the natural consequence of his actions. —(A leading maxim of English law.)

Evocation, withdrawing a case from the cognizance of an inferior court.—*Fr. Law.*

Ewage [fr. *eau*, Fr., water], toll paid for water-passage.—*Jacob.* See AQUAGE.

Ewbrice [fr. *ew*, Sax., marriage, and *bryce*, breaking], adultery.—*Jacob.*

Ewry, an office in the royal household where the table linen, etc., is taken care of.

Ex abundanti cautelâ (*from abundant caution*).

Exaction, a wrong done by an officer, or one in pretended authority, by taking a reward or fee for that which the law allows not, whereas *extortion* is where an officer takes more than is due, when something is due to him. The punishment is fine and imprisonment. *Co. Litt.* 368.

Exactor regis, the king's collector of taxes; also a sheriff.

Ex æquo et bono (*in equity and good conscience*).

Examination, the act of eliciting by questions a person's knowledge of facts or science. A witness undergoes three examinations: (1) *Examination-in-chief*, which is made by the party calling him; (2) *Cross-Examination*, by the opposite party; and (3) *Re-examination*, by the party who called the witness, which is confined to matters arising out of the cross-examination.

Examiners, or **Examiners of the Court.** A sufficient number of barristers of not less than three years' standing appointed by the Lord Chancellor to act for a period not exceeding five years, in examining out of court witnesses in any cause whose evidence shall be directed by the Court to be taken before one of such examiners.

Examiners in Chancery. Two officers appointed to examine witnesses in town in causes depending in that court. Special examiners were appointed for the country, and occasionally for town.—*Smi. Eq. Pr.* 419.

Exannual roll, the old way of exhibiting sheriffs' accounts. Illeviable and desperate debts were transcribed into this roll, which was yearly read, to see what might be recovered.

Ex antecedentibus et consequentibus fit optima interpretatio. 2 Inst. 317.—(The best interpretation is made from the context.)

Ex assensu patris, *dower.* See DOWER EX ASSENSU PATRIS.

Excambiator, a broker; one employed to exchange lands.—*Cowel.*

Excambion, a contract whereby one piece of land is exchanged for another.—*Scotch Law.*

Excambium, an exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ.*—1 *Reeves*, 101 & 103.

Ex cathedrâ, with the weight of one in authority; originally applied to the decisions of the Popes from their *cathedra*, or chair.

Excellency, the title of a Viceroy, Governor-general, Ambassador, or Commander-in-chief.

Exceptio, the designation for the defendant's plea.—*Civil Law.*

Exceptio ejus rei cujus petitur dissolutio nulla est. Jenk. Cent. 37.—(A plea of that thing of which the dissolution is sought is a nullity.)

Exceptio falsi omnium ultima.—(A plea of that which is false is the last of all.)

Exceptio nulla est versus actionem quæ exceptionem perimit. Jenk. Cent. 106.—(A plea against an action which entirely destroys the plea is a nullity.)

Exceptio probat regulam de rebus non exceptis. 11 Co. Litt. 41.—(An exception proves the rule concerning things not excepted.)

Exceptio quæ firmat legem, exponit legem. 2 Buls. 189.—(An exception which confirms the law, expounds the law.)

Exceptio semper ultima ponenda est. 9 Co. Litt. 53.—(An exception is always to be last.)

Exceptio rei judicatæ, a defence that the matter has been already adjudged in another court between the parties.—*Scotch Law.*

Exception, exclusion of any thing or person; a stop or stay to an action; also the particular point of law stated in the margin of a demurrer. In Chancery, exceptions might be taken to pleadings if scandalous, and if a defendant's answer were insufficient the plaintiff might file exceptions to it.—*Smi. Ch. Pr.* 344, 786.

In summary proceedings upon an Act of Parliament, an exception in the act 'may be proved by the defendant, but need not be negatived or specified in the information or complaint'; and if so specified or negatived need not be proved by the informant or complainant. Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 39, subs. 2, extending the proviso of the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 14.

In the Scotch Law, as in the Roman, *exception* is synonymous with *defence.*

Exceptions, Bill of. See BILL OF EXCEPTIONS.

Exceptis excipiendis, with all necessary exceptions.

Excerpta, or **Excerpts.** Extracts.

Excess. When a defendant pleaded to

action of assault that the plaintiff trespassed on his land, and he would not depart when ordered, whereupon he, *molliter manus imposuit*, gently laid hands on him: the replication of excess was to the effect that the defendant used more force than necessary. See PLEADING.

Excessivum in jure reprobatur. Excessus in re quilibet jure reprobatur communi. Co. Litt. 44.—(Excess in law is reprehended. Excess in anything is reprehended at Common Law.)

Exchange [*cambium, permutatio*, Lat.], often contracted into *change*, a building or other place in considerable trading cities, where merchants, agents, bankers, brokers, and other persons concerned in commerce, meet at certain times to confer and treat together of matters relating to exchanges, remittances, payments, adventures, assurances, freights, and other mercantile negotiations, both by sea and land.

Also used to designate that species of mercantile transactions by which the debts of individuals residing at a distance from their creditors are satisfied without the transmission of actual money.

Par of Exchange. The *par* of the currency of any two countries means, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of both to be of the precise weight and purity fixed by their respective mints. Thus, according to the mint regulations of Great Britain and France, 1*l.* sterling is equal to 25 fr. 20 c., which is said to be the par between London and Paris. And the exchange between the two countries is said to be at par when bills are negotiated on this footing; that is, for example, when a bill for 100*l.* drawn in London is worth 2520 fr. in Paris, and conversely. When 1*l.* in London buys a bill on Paris for more than 25 fr. 20 c. the exchange is said to be in favour of London, and against Paris; and when, on the other hand, 1*l.* in London will not buy a bill on Paris for 25 fr. 20 c. the exchange is against London and in favour of Paris.

Circumstances which determine the course of exchange. The exchange is affected, or made to diverge from par, by two classes of circumstances; *first*, by any discrepancy between the actual weight and fineness of the coins, or of the bullion for which the substitutes used in their place will exchange, and their weight or fineness, as fixed by the mint regulations; and, *secondly*, by any sudden increase or diminution of the bills drawn in one country upon another.—*McCull. Com. Dict.*

Exchange, Bill of. See BILL OF EXCHANGE.

Exchange [fr. *excambium*, Lat.], **Deed of**, an original Common Law conveyance, for the reciprocal transfer of interests, *ejusdem generis*, as fee simple for fee simple, legal estate for legal estate, copyhold for copyhold of the same manor, and the like, the one in consideration of the other. It takes place between two distinct contracting parties only, although several persons may compose each party. The operative and indispensable verb is 'exchange,' which no longer implies a general warranty or right of re-entry (8 & 9 Vict. c. 106, s. 4). An actual entry upon the property exchanged by the parties themselves to the deed is essential. The exchange is void if either party dies before entry, for, under such circumstances, the parties have no freehold in them, for the heir cannot enter and take as a purchaser, because he takes under the deed, only by way of limitation in course of descent.

In consequence of the inconvenience arising from the implied warranty and re-entry, exchange fell into disuse, and mutual conveyances, the one in consideration of the other, were resorted to; but the abolition of this implied condition in law tends to revive Common Law exchanges.

The General Inclosure Act (8 & 9 Vict. c. 118, s. 92) provides for the allotment and award of any land to be enclosed in exchange for any other land within the parish in which the land to be inclosed shall be situate. Consult *Cooke on Inclosures.*

The Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 3, subs. 3, allows a tenant for life to make an exchange of settled land for other land.

Exchange of livings, effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice; if either die before both are inducted, the exchange is void.—31 *Eliz.* c. 6, s. 8.

Exchanges Regimental. See 38 Vict. c. 16, by which the Sovereign may from time to time by *regulation* authorise exchanges by officers from one regiment to another, and nothing in the 'Army Brokerage Acts' (i.e., 5 & 6 Edw. VI., c. 16, and 49 Geo. III. c. 126, by which the sale of commissions is punishable) extends to exchanges so authorised.

Escheat. See ESCHEAT.

Exchequer bills, bills of credit issued by authority of Parliament. They are for various sums, and bear interest (generally from 1½*d.* to 2½*d.* per diem, per 100*l.*) according to the usual rate at the time. The advances of the Bank to Government are made upon Ex-

chequer bills; and the daily transactions between the Bank and Government are principally carried on through their intervention.

Notice of the time at which outstanding Exchequer bills are to be paid off is given by public advertisement. Bankers prefer investing in Exchequer bills to any other species of stock, even though the interest be for the most part comparatively low; because the capital may be received at the Treasury at the rate originally paid for it, the holders being exempted from any risk of fluctuation. Exchequer bills were first issued in 1696, and have been annually issued ever since. —*McCull. Com. Dict.*; and see the act for consolidating the several laws regulating the preparation, issue, and payment of Exchequer bills and bonds, 29 & 30 Vict. c. 25. As to the punishment for the forgery of Exchequer bills, see 24 & 25 Vict. c. 98, s. 8; 29 & 30 Vict. c. 25, s. 15; 36 & 37 Vict. c. 54, s. 5.

Exchequer, Court of [fr. *eschequier*, Nor.-Fr.; *scaccarium*, Low Lat.; *schatz*, Germ., a treasure], consisted of two divisions, a Court of Revenue, and a Court of Common Law, having also an equitable jurisdiction, which, except when it sat as a Court of Revenue, was transferred to the Court of Chancery by 5 Vict. c. 5. See *A.-G* v. *Halling*, 15 *M. & W.* 687. As a Court of Revenue it ascertained, and enforced by proceedings appropriate to the case, the proprietary rights of the Crown against the subjects of the realm. To proceed against a person in this department of the court was called to *exchequer* him. The practice and procedure on the revenue side of this court was amended by 22 & 23 Vict. c. 21, and afterwards by 28 & 29 Vict. c. 104. As a Court of Common Law (after having obtained jurisdiction by the fiction of *quominus* (see QUOMINUS), it administered redress between subject and subject in all actions whatever, except real actions. It was a court of record, and its judges were six (formerly five) in number, consisting of one chief and five (formerly four) *puisné* barons. This Court was made a Division of the High Court of Justice (Jud. Act, 1873, ss. 31, 34). See EXCHEQUER DIVISION.

Exchequer Chamber, Court, of, a tribunal of error and appeal.

First, it existed in former times as a Court of mere debate, such causes from the other Courts being sometimes adjourned into it as the judges upon argument found to be of great weight and difficulty, before any judgment was given upon them in the court below. It then consisted of all the judges of the three Superior Courts of Common Law, and at times the Lord Chancellor also.

Second, it existed as a Court of Error, where the judgments of each of the Superior Courts of Common Law, in all actions whatever, were subject to revision by the judges of the other two sitting collectively. See 27 Eliz. c. 8 (error from Queen's Bench) and 11 Geo. IV., and 1 Wm. IV. c. 70, s. 8 (error from the three Courts). The composition of this Court consequently admitted of three different combinations, consisting of any two of the Courts below which were not parties to the judgment appealed against. There was no given number required to constitute the Exchequer Chamber, but the Court never consisted of less than five. One counsel only was heard on each side. Error lay from this Court to the House of Lords. The Court is abolished, and its jurisdiction in appeals (proceedings in error in civil cases and bills of exceptions being abolished) is transferred to the Court of Appeal (Jud. Act, 1875, s. 18) (4). See APPEAL, COURT OF.

The 40 Geo. II. c. 39, established a Court of Exchequer Chamber in Ireland.

Exchequer Division. A division of the High Court of Justice, to which the special business of the Court of Exchequer was specially assigned by s. 34 of the Judicature Act, 1873. Merged in the Queen's Bench Division from and after February, 1881, by Order in Council under s. 31 of that Act.

Excise [fr. *accisis*, Dut.; *excisum*, Lat.], the name given to the duties or taxes laid on certain articles produced and consumed at home, amongst which spirits have always been the most important; but, exclusive of these, the duties on the licenses of auctioneers, brewers, etc., etc., and on the licenses to keep dogs, kill game, etc., etc., are included in the excise duties.

Excise duties were introduced into England by the Long Parliament in 1643, being then laid on the makers and vendors of ale, beer, cider, and perry. The management of the excise, originally and for a long time entrusted to special commissioners (as to whom see 7 & 8 Geo. IV. c. 53), was, in 1849, by 12 Vict. c. 1, transferred to the Board of Inland Revenue.

Consult *Bell and Dwelly's Excise Acts*, published in 1873.

Exclusa, Exclusagium, a sluice to carry off water; the payment to the lord for the benefit of such a sluice.—*Cowel.*

Excommencement, excommunication.—*Law French.* See 23 Hen. VIII. c. 3.

Excommunication, an ecclesiastical interdict or censure, divided into the greater and the lesser; by the greater a person was excluded from the communion of the church and the company of the faithful, and was rendered incapable of any legal act; by the

lesser he was merely debarred from participation in the sacraments. (As to refusal to administer the Holy Communion, see *Jenkins* v. *Cook*, 1 P. D. 80.)

Excommunication was formerly the process by which the decrees and orders of the Ecclesiastical Courts were enforced; but in all cases of contempt of court it has now been abolished, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge has power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery; whereupon a writ *de contumace capiendo* shall issue having the same force as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*.—53 *Geo. III.* c. 127, s. 2. See 2 & 3 Wm. IV. c. 93; 3 & 4 Vict. c. 93; and 6 & 7 Vict. c. 38.

Excommunicato capiendo. See EXCOMMUNICATION.

Excommunicato deliberando, a writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction.—*F. N. B.* 63.

Excommunicato interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri. Co. Litt. 133.—(Every legal act is forbidden an excommunicated person, so that he cannot act; nor sue any person; but he may be sued by others.)

Excommunicato recapiendo, a writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again.—*Reg. Orig.* 67.

Ex concessis, as has been already allowed.

Ex contractu (*from a contract*). One of the greatest classes of obligation from which a right of action accrues. The actions are (1) account; (2) *assumpsit*, or promises; (3) covenant; (4) debt; (5) detinue; (6) *scire facias*, or revivor. See now ACTION.

Exculpation, letters of, a warrant granted at the suit of a prisoner for citing witnesses in his own defence.—*Scotch Law.*

Excusable homicide is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray.

Homicide, *per infortunium*, is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but if death ensue from any unlawful act, the offence is manslaughter, and not misadventure.

Homicide, *se defendendo*, is where a man kills another upon a sudden affray, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.—*Bl. Com.* 178.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. Bac. Max. r. 15.—(That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries.)

Excuss, to seize and detain by law.

Excussion, seizure by law.

Ex debito justitiæ. From what is owed by justice, or of right. Said of a remedy which the Court has no discretion to refuse.

Ex delicto (*from a tort or offence*). The actions which arose from torts were: (1) case, (2) trespass, (3) trover, (4) replevin. Consult *Addison on Torts.*

Ex diuturnitate temporis omnia præsumuntur esse solemniter acta. Jenk. Cent. 185.—(From lapse of time all things are presumed to have been done properly.)

Ex dolo malo non oritur actio. Cowp. 343.—(From a fraud an action does not arise.)

Exeat, a permission which a bishop grants to a priest to go out of his diocese; also leave to go out generally.

Executed, something done or completed.

Executed consideration, a consideration which is executed before the promise upon which it is founded is made, as where A. bails a man's servant, and the master afterwards promises to indemnify A.; but if a man promise to indemnify A. in the event of his bailing his servant, the consideration is then executory. With respect to an executed consideration, the rule is, that if it were not at the precedent request of the promiser, but a merely voluntary courtesy, it will not suffice to support a promise; therefore, in the first example, the promise would not be binding unless the bailing were at the master's precedent request.—*Smith on Contracts;* and notes to *Lampleigh* v. *Braithwait*, 1 *Smith L. C.*, 9th ed., 153.

Executed contract, where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot. A contract is said to be executory where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time.—*Story on Contracts*, 8.

Executed estates, estates in possession.

Executed fine, the fine *sur cognizance de droit come ceo que il a de son done*; or a

fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV. c. 74.

Executed remainder. A vested remainder, *which see.*

Executed trust. When an estate is conveyed to the use of A. and his heirs, with a simple declaration of trust for B. and his heirs, or the heirs of his body, the trust is perfect; and it is said to be executed, because no further act is necessary to be done by the trustee to raise and give effect to it; because there is no ground for the interference of a Court of Equity to affix a meaning to the words declaratory of the trust, which they do not legally import.—1 *Sand. Uses and Trusts*, 335.

As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenure of his trust, whether active or passive, it would be more accurate and precise to substitute the terms, *perfect and imperfect*, for *executed* and *executory* trusts.

Executed use, the first use in a conveyance upon which the Statute of Uses operates by bringing the possession to it, the combination of which, i.e., the use and the possession, form the legal estate, and thus the statute is said to execute the use.

Executio est finis et fructus legis. Co. Litt. 289.—(Execution is the end and fruit of the law.)

Executio juris non habet injuriam. 2 Rol. Rep. 301.—(The execution of law does no injury.)

Executio est executio juris secundum judicium. 3 Inst. 212.—(Execution is the execution of the law according to the judgment.)

Execution, the last stage of a suit whereby possession is obtained of anything recovered by a judgment. It is styled *final process*, and is regulated by R. S. C. 1883, Ord. XLII., Rule 17 of which allows immediate execution in ordinary cases.

The ordinary writs of execution are *capias ad satisfaciendum; fieri facias; elegit;* and *habere facias possessionem.* See these titles respectively. As to the writ of *capias ad satisfaciendum*, it is to be borne in mind that by the 32 & 33 Vict. c. 62, imprisonment for debt has been abolished, except in the cases specified in s. 4. See IMPRISONMENT.

By 23 & 24 Vict. c. 38, writs of execution of judgments are required to be registered in order to affect lands as against *bonâ fide* purchasers for valuable consideration, and by 27 & 28 Vict. c. 112, no judgment, etc., shall affect lands, until such lands shall have been actually delivered in execution by virtue of a writ of elegit, or other lawful authority; and such writ of execution must be registered.

Execution of Criminals must be performed by the legal officer—the sheriff, or his deputy. —4 *Bl. Com.* c. xxxii. The common law mode of execution is by hanging, which until 1868 took place in public; but in that year the Act 31 Vict. c. 24 prescribed that the execution must take place within the walls of the prison, in presence of the sheriff, gaoler, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, or allows.

As to the suspension of execution of sentence of death in case of a lunatic, see 27 & 28 Vict. c. 29.

Execution of decree. Sometimes, from the neglect of parties, or some other cause, it became impossible to carry a decree into execution without the further decree of the Court upon a bill filed for that purpose. This happened generally in cases where parties, having neglected to proceed upon the decree, their rights under it became so embarrassed by a variety of subsequent events that it was necessary to have the decree of the Court to settle and ascertain them. Such a bill might also be brought to carry into execution the judgment of an inferior Court of Equity, if the jurisdiction of that Court was not equal to the purpose; as in the case of a decree in Wales, which the defendant avoided by fleeing into England.

This species of bill was generally partly an original bill, and partly a bill in the nature of an original bill, though not strictly original.—*Story's Eq. Plead.* 342; *Dan. Ch. Pr.*, 5th ed., 1429. See JUDGMENT.

Execution of Deeds, the signing, sealing, and delivery of them by the parties, as their own acts and deeds, in the presence of witnesses. See DEED. As to compulsory executions, the 14th section of the Judicature Act, 1884, enacts, that when any person fails to comply with a judgment directing him to execute any conveyance, etc., the Court may order that the conveyance, etc., may be executed by such person as the Court may nominate to execute the deed instead, and that such execution shall have the same validity as if the conveyance, etc., had been executed by the party himself.

The rule that a purchaser was entitled to have the conveyance executed in his presence is abrogated by the Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. c. 41, s. 8, which section, however, preserves the rule that the purchaser may have, at his own cost, the execution of the conveyance attested by some person appointed by him.

Execution of Wills. By the Wills Act.

1 Vict. c. 26, a will must be in writing (except in the case of soldiers and sailors in active service) and signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and each witness must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary, although it is usual to embody in an attestation-clause all the statutory requirements. An Act passed in 1852, 15 & 16 Vict. c. 24, contains most elaborate saving allowances for the *position* of the signature. Thus, the signature of the testator may be placed 'at, or after, or following, or under, or beside, or opposite to, the end of the will'; 'a blank space may intervene between the concluding word of the will and the signature'; the signature may be 'on a side, or page, or other portion of the paper or papers containing the will, whereon no clause, or paragraph, or disposing part of the will may be written above the signature,' etc., the only restriction being that 'no signature is to be operative to give effect to any disposition or direction which is underneath or which follows it; nor to give effect to any disposition or direction inserted after the signature is made.'

Obliterations, interlineations, or other alterations must, by s. 21 of the Wills Act, be executed in the same manner as a will. See *Jarman on Wills* and *Williams on Executors*, and post. tit. WILL.

Executione facienda, a writ commanding execution of a judgment. Obsolete.—*Cowel.*

Executione faciendâ in withernamium, a writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them.—*Reg. Orig.* 82.

Executione judicii, a writ directed to the judge of an Inferior Court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution.—*F. N. B.* 20.

Executioner, he that inflicts capital punishment; he that puts to death according to the sentence of the law. See EXECUTION OF CRIMINALS.

Executive, that branch of the government which puts the laws into execution, as distinguished from the *legislative* and *judicial* branches. The body that deliberates and enacts laws is legislative; the body that judges and applies the laws in particular cases is judicial; and the body that carries the laws into effect, or superintends the enforcement of them, is executive. The executive authority, in all monarchies, is vested in the sovereign.

Executor [fr. *executeur*, Fr.], a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

The leading duties and responsibilities of an executor may be thus classed:—

(1) He will not be allowed as against creditors extravagant funeral expenses if the testator died insolvent; and if he neglects to secure the property, and loss ensue, he will be personally liable for a devastavit.

(2) Before probate of the will an executor may effectually do most of the acts that he could do afterwards, because by the very appointment the testator has evinced personal confidence in his nominee, and, therefore, the interest of an executor arises not from the probate, but from the will; and he may release a debt or assign a term for years before probate. Also, he may collect and secure assets, receive debts, and give effectual receipts, assent to a legacy, present bills or notes for payment, give notices of dishonour, or take proceedings in bankruptcy; so he may issue a writ of summons, but he must obtain probate before the hearing. He may be sued before probate, if he has acted.

(3) It is a usual and proper precaution, in cases of the least doubt, shortly after the funeral, to publish an advertisement in the principal newspapers for debtors to pay their debts, and for claimants to send in the particulars of their claims to a named person.

(4) Probate should be obtained within six calendar months after death of testator, and if delayed after that time a penalty of 100*l.* and 10*l.* per cent. on the property would be incurred. If there be a suit or dispute relative to the will or administration, the probate or letters of administration should be obtained within two calendar months after it is ended (55 Geo. III. c. 184, s. 37). The probate should be obtained to the extent of the sum really expected to be received.

(5) It is the duty of the executor to collect and speedily reduce into money the personal assets, when not otherwise directed, especially if they be of a perishable nature.

(6) As an executor cannot sue himself, the Law allows him, when he has been legally invested with his representative character, to retain out of any assets that may have come to his hands money to the extent of all funeral and testamentary expenses and debts legally paid by him out of his own pocket, and also any debt due to himself, before he pays any other creditor, in equal degree, and he may retain his own debt, notwithstanding

a decree has been made in a suit by other creditors for administration of assets equally, and notwithstanding assets out of which he seeks to retain his debt came to his hands after decree, and even if the debt be barred by the Statute of Limitations.

(7) The executor may, even after action commenced by an adverse creditor, and at any time before judgment therein, confess a judgment, and give a preference to any other favoured creditor in the same or a higher degree, thereby postponing the party first suing. But the Court will, to a certain extent, by a judgment, but not before, upon action brought by any creditor on behalf of himself and all other creditors, against the executor, require him to account and distribute equally and decree a proper division and distribution, and this is considered in the nature of a judgment in favour of all the creditors.

(8) In general, legacies ought not to be paid within a year after the death of the testator, and not even then without an indemnity, if there be the least reason to comprehend that there are debts or claims outstanding. This year is allowed in analogy to the Statute of Distributions, which enacts 'that no distribution of the goods of any person dying intestate be made till after one year after the intestate's death'; and in order that the executor may have full opportunity to obtain information of the state of the property, an executor cannot be compelled to pay a legacy, within that period, even in a case where the testator directed it to be discharged within six months after his death.

(9) An executor is not entitled to any remuneration for his own personal trouble or loss of time, unless it be expressed in the will: on which account the law formerly gave to the executor the whole residue undisposed of, unless, by some expression, to be collected from the will, a contrary intention was to be collected. But the next of kin became entitled to the unbequeathed residue by 11 Geo. IV. and 1 Wm. IV. c. 40.

The distribution of a residuary estate by the executor is to some extent facilitated by 22 & 23 Vict. c. 35, ss. 27—29, which allows a sum to be set apart to meet future claims upon the estate in respect of the covenants in a lease assigned to a purchaser, etc.

As to the administration of persons deceased in the naval service, see 28 & 29 Vict. c. 111. The next of kin of a deceased soldier are in some cases allowed to receive his share of prize money without taking out probate or letters of administration (27 & 28 Vict. c. 36). When an executor or administrator sues, his representative character must appear on the writ (R. S. C. 1883, Ord. III., Rule 4); and he may sue or be sued without joining the parties beneficially interested in the estate (*Ibid.*, Ord. XVI., Rule 8). Consult *Williams on Executors*, and see titles PROBATE, WILL.

Executor de son tort. If a stranger take upon himself to act as executor, without any just authority (as by intermeddling with the goods of the deceased, and any other transactions), he is called in Law an executor of his own wrong, *de son tort*, and is liable to all the trouble of an executorship without any of the profits or advantages; but the doing of acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling as will charge a man as executor of his own wrong. Such an one cannot bring an action himself in right of the deceased; but actions may be brought against him. And in all actions by creditors against such an intruder he shall be named as executor generally; for the most obvious conclusion which strangers can form of his conduct is, that he has a will of the deceased wherein he is named executor, but has not yet taken probate thereof. He is chargeable with the debts of the deceased, so far as assets come to his hands; and, as against creditors in general, he is allowed all payments made to any other creditor in the same or a superior degree, himself only excepted. And though as against the rightful executor or administrator he cannot plead such payment, yet it shall be allowed him in mitigation of damages; unless, perhaps, upon a deficiency of assets, whereby the rightful executor may be prevented from satisfying his own debt.—1 *Wms. Exors.*; and see *Peters* v. *Leeder*, 47 *L. J. Q. B.* 573.

Executor of an Executor. The interest in a testator's estate and effects, vested in his executor, at the decease of the executor devolves upon such executor's executor; but in the case of the decease of an administrator, a fresh administration must be granted; for this reason, that, whereas an executor is appointed by the testator, an administrator merely derives his authority from the Court of Probate.

Executor lucratus. An executor who has assets of his testator who in his lifetime made himself liable by a wrongful interference with the property of another.—*Davidson* v. *Tulloch*, 6 *Jurist* (*N. S.*), 543.

Executory, performing official duties; contingent; also personal estate of a deceased; whatever may be executed.

Executory consideration. A consideration which is to be performed after the contract

for which it is a consideration is made. See CONSIDERATION.

Executory contract. A contract in which something is to be performed after it is made, as where A. agrees to build a house for B., and B. agrees to pay A. 1000*l.* when the house is finished. See CONTRACT.

Executory devise. Mr. Fearne (*Cont. Rem.* 386) defies an executory devise to be strictly, such a limitation of a future estate or interest in lands or chattels (though in the case of chattels personal, it is more properly an executory bequest) as the Law admits in the case of a will, though contrary to the rules of limitation in conveyances at Common Law. It is only an indulgence allowed to a man's last will and testament, where otherwise the words of the will would be void; for wherever a future interest is so limited by devise as to fall within the rules laid down for the limitation of contingent remainders; such an interest is not an executory devise, but a contingent remainder.

Executory Devises have been divided into three kinds, viz.:—

(1) Where a testator devises his whole fee-simple, but, upon some contingency, qualifies such devise, and limits an estate on the contingency; e.g., a devise of land to the testator's wife for life, remainder to C., his second son in fee, provided if D., his third son, should, within three months after the wife's death, pay 500*l.* to C. or his executors, then to D. and his heirs: D. has an executory devise.

(2) Where a testator, without disposing of the immediate fee, gives the future estate to arise, either upon a contingency, or at a period certain, unpreceded by, or not having the requisite connection with, any immediate freehold, to give it effect as a remainder.

The case of a devise to one, to take effect six months after the testator's decease, is an instance of the first class in this description.

And the case of a limitation to one for life, and from and after the expiration of one day (or any other period, not exceeding twenty-one years, we may suppose) next ensuing his decease, then over to another, may be adduced as an instance of the latter part of this description.

(3) The third sort of executory devises, comprising all that relates to chattels, is where a term or any personal estate is bequeathed to one for life, or otherwise, and after the decease of the devisee or legatee for life, or some other contingency or period, is given over to another person.

It is to be remarked that a remainder can only be limited in freehold estates. In personal property, under which both chattels real and chattels personal are included, there cannot be a remainder in the strict sense of that word; and therefore every future bequest of personal property, whether it be preceded or not preceded by a prior bequest, or limited on a certain or an uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated.

The great and essential difference between the nature of a contingent remainder and that of an executory devise consists in this, that the first may be barred and destroyed or prevented from taking effect by several different means; but it is a rule, that an executory devise cannot be prevented or destroyed by any alteration whatsoever, in the estate out of which or after which it is limited.

If the executory devise be limited to take effect on an estate-tail, then the tenant in tail may by a deed of disposition in conformity with the stat. 3 & 4 Wm. IV. c. 74, bar the entail, and all remainders, executory devises, and conditional limitations dependent thereupon. If the executory devise is expectant on an estate in fee, then there are no means of preventing its taking effect, if the event happen on which it is to arise.

Executory estates, interests which depend for their enjoyment on some subsequent event or contingency. These are capable of being assigned.—8 & 9 *Vict.* c. 106, s. 6.

Executory fines, the fines *sur cognizance de droit tantum; sur concessit;* and *sur done, grant et render.* Abolished by 3 & 4 Wm. IV. c. 74.

Executory Limitation. A limitation of a future interest by deed or will; if by will, it is also called an executory devise. The Conveyancing Act, 1882, 45 & 46 Vict. c. 39, s. 10, restricts executory limitations of land contained in an instrument coming into operation after 1st Jan., 1883, by this enactment:—

'Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of 21 years, of the class on default or failure whereof the limitation over was to take effect.'

Executory remainder, a contingent remainder, because no present interest passes.

Executory trusts. In the case of articles of agreement, made in contemplation of mar-

riage, and which are consequently preparatory to a settlement, and in the case of those wills which are merely directory of a subsequent conveyance, the trusts declared by them are said to be executory or imperfect, because they require an ulterior act to raise and perfect them. They are rather considered as instructions for settlements than as instruments in themselves complete; and therefore Equity, in order to promote the presumed views of the parties in the one case and to support the manifest intention of the testator in the other, will attach to the words expressive of the trusts a more liberal and enlarged construction than they would admit if applied either to the limitation of a legal estate or a trust executed.—1 *Sand. Uses and Trusts*, 237.

Executory uses, springing uses, which confer a legal title answering to an executory devise; as when a limitation to the use of A. in fee, is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

Executrix, a woman appointed by a testator to perform his will. By the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, s. 18, a married woman appointed an executrix may sue and be sued, and may transfer stock independently of her husband 'as if she were a *feme sole*.' See EXECUTOR.

Exemplary damages, damages on an unsparing scale, given in respect of tortious acts, committed through malice or other circumstances of aggravation. In *Belt* v. *Lawes*, an action by a sculptor for libellously styling him an impostor, tried in 1882, the jury awarded 5000*l.* damages; and a rule for a new trial on the ground, amongst others, of excessive damages was afterwards discharged.

Exemplification, a copy; a certified transcript either under the great seal or under the seal of a particular court.—1 *Stark. Evid.* 224.

Exemplificatione, a writ granted for the exemplification or transcript of an original record.—*Reg. Orig.* 290.

Exempli gratiâ [abbrev. ex. gr., or e. g., Lat.], for the purpose of example, or for instance.

Exemption, immunity; freedom from imposts; a privilege to be free from service or appearance.

Exennium, or **Exhenium**, a gift; a new year's gift.—*Cowel.*

Exequatur, an official recognition of a person in the character of consul or commercial agent, authorising him to exercise his power, and given by the government of the country in which it is to be exercised.

Exercitorial power, the trust given to a shipmaster.

Exercitor navis, the temporary owner or charterer of a ship.

Exercitual, a heriot, paid only in arms, horses, or military accoutrements.

Ex facto jus oritur. 2 Inst. 49.—(The law arises from the fact.)—See *Broom's Leg. Max.*

Exeter, or **Exon, Domesday**, the name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published with several other surveys nearly contemporary, by order of the Commissioners of the Public Records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816.

Exfrediare, to break the peace; to commit open violence.—*Jacob.*

Ex frequenti delicto augetur pœna. 2 Inst. 479.—(Punishment increases with increasing crime.)

Ex gravi querelâ, a writ that lay for him to whom any lands or tenements in fee were devised (within any city, town, or borough wherein lands were devisable by custom), against the heir of the devisor when he entered and detained them from him.—*Reg. Orig.* 224. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Exheredatio [Lat.], the act of disinheriting. The exclusion of a child by his father from the inheritance of any part of his estate. —*Civil Law.* See *Sand. Just.*, 7th ed., liv., 181—188.

Exhibit, a document or other thing shown to a witness when giving evidence, and referred to by him in his evidence. The term is usually applied to a document referred to in, but not annexed to, an affidavit, and shown to the witness when the affidavit is sworn. A certificate, signed by the person before whom the affidavit is sworn, identifying the document, is usually endorsed upon the exhibit.

Exhibitant, a person who exhibits anything, as a complainant in articles of the peace.

Exhibition, an allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also, the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation.—*Paroch. Antiq.* 304.

In the Scotch law it is an action for compelling the production of writings.

Exhibition Medals Act, 1863, 26 & 27 Vict.

c. 119, to prevent false representations as to grants of medals or certificates by the commissioners for the Exhibitions of 1851 and 1862.

Exigence or **Exigency** [probably a corruption of *exigents*, vitiated by an unskilful pronunciation], demand, want, need.

Exigendaries. See EXIGENTER.

Exigent or **Exigi facias** (*that you cause to be demanded*), judicial writ commanding the sheriff to demand the defendant from county court to county court, or, if in London, from husting to husting, until he be outlawed; or if he appear, then to take and have him before the court on a day certain to answer to the plaintiff in an action of, etc. See OUTLAW.

Exigenter [fr. *exigendarius*, Lat.], an officer of the Court of Common Pleas, who makes all exigents, proclamations, etc.—*Cowel.*

Exigible, demandable, requirable.

Exile [fr. *exilium*, Lat.], banishment; the person banished.

Exilium, spoiling. The author of Fleta distinguishes between *vastum*, *destructio*, and *exilium*; for he tells us that *vastum* and *destructio* are almost the same, and are properly applied to houses, gardens, or woods; but *exilium* is where servants are enfranchised, and afterwards unlawfully turned out of their tenements.—*Fleta*, l. 1, c. xi.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio. 7 Co. 20. —(Exile is a privation of country, a change of natal soil, a loss of native laws.)

Exitus, children, offspring; 2, the rents, issues, and profits of lands and tenements; 3, the conclusion of the pleadings. See ISSUE.

Exlegalitus, he who is prosecuted as an outlaw.—*Jacob.*

Ex-lex, an outlaw.

Ex maleficio non oritur contractus.—(From a tort a contract does not arise.)

Ex malis moribus bonæ leges natæ sunt. 2 Inst. 161.—(Good laws arise from evil manners.)

Ex mero motu (*of his own accord*). See OFFICE OF A JUDGE.

Ex multitudine signorum colligitur identitas vera. Bacon.—(True identity is collected from a number of signs.)

Ex nudo pacto non oritur actio. Noy. Max. 24.—(An action does not arise from a bare promise.) See *Br. Max.* 6th ed., 699.

Ex necessitate legis (*from the necessity of law*).

Ex necessitate rei (*from the necessity of the case*).

Ex officio (*officially; by virtue of office*); e.g., justices of the peace are ex officio guardians of the poor.

Ex officio informations, proceedings filed in the Queen's Bench Division by the Attorney-General, at the direct and proper instance of the Crown, in cases of such enormous misdemeanours as peculiarly tend to disturb or endanger the government, or to molest or affront the sovereign in discharging the royal functions. The information is tried by a jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *Nisi Prius* into that county, and tried either by a common or special jury, like a civil action.—4 *Steph. Com.*

Ex officio oath, an oath taken by offending priests; abolished by 13 Car. II. st. 1, c. 12.

Exoine, Essoigne [Fr.], the excuse for not appearing in court when cited. See ESSOIN.

Exoneratione sectæ, a writ that lay for the Crown's ward, to be free from all suit to the county-court, hundred-court, leet, etc., during wardship.—*F. N. B.* 158.

Exoneratione sectâ ad curiam baron, a writ of the same nature, issued by the guardian of the Crown's ward, and addressed to the sheriffs or stewards of the Court, forbidding them to distrain him, etc., for not doing suit of court, etc.—*New N. B.* 352.

Exoneretur (*that he be discharged*), an entry made upon the bail-piece upon render of a defendant to prison in discharge of his bail.

Exordium, the beginning or introductory part of a speech.

Ex pacto illicito non oritur actio.—(No action arises out of an illicit bargain.)

Ex parte (*on behalf of*), a proceeding by one party in the absence of the other.

Ex parte talis, a writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison. —*F. N. B.* 129.

Expatriation, the forsaking one's own country, and renouncing allegiance, with the intention of becoming a permanent resident and citizen in another country. See Naturalization Act, 1870, 33 Vict. c. 14, ss. 4, 6.

Ex paucis dictis intendere plurima possis. Litt. s. 384.—(You can imply many things from few expressions.)

Expectancy, in, executory; relating to something *in futuro*.

Expectant, having relation to, or dependent upon.

Expectant estates, interests to come into possession and be enjoyed *in futuro*; they are of two sorts at Common Law—reversions and remainders.—2 *Bl. Com.*, 163.

Expectant heir. A person to whom property is assured on the death of another

person. Expectant heirs wishing to anticipate this property, have frequently borrowed money, to be repaid when the expected property shall devolve upon them. From the uncertainty of this period, the unsoundness of the security which the expectant heir can offer, and from the pressing character of his immediate necessities, the rate of interest is necessarily higher than that upon an ordinary loan, and is frequently very much higher than the risk run by the lender requires. At common law all such loans are good, and the interest upon them, however high, recoverable. By the Usury Acts, indeed,—which, however, did not apply to loans to expectant heirs with any greater vigour than to loans to other persons,—they were for a long period of years subject to the restriction that only a fixed maximum rate of interest could be exacted, but the Usury Acts were repealed in 1854, 17 & 18 Vict. c. 90. See USURY.

From very early times, however, Courts of Equity have been accustomed to interfere between lender and borrower in these cases, and to set aside as 'unconscionable bargains' those mortgages of reversionary interests or other contracts of sale or loan in which the distress of the expectant heir is taken advantage of. See the leading case of *Earl of Chesterfield* v. *Jansen*, 1 *W. & T. L. C.*, and *Earl of Aylesford* v. *Morris*, *L. R.* 8 *Ch.* 484, which latter case settles that the Act 31 Vict. c. 4, enacting that no *bonâ fide* purchase of a reversion shall be set aside 'merely on the ground of undervalue,' leaves the jurisdiction of courts of equity to set aside these unconscionable bargains. See REVERSION.

The practice of the Court in setting aside the bargain is to direct the reversion charged to stand as security for money actually advanced only, and for interest at the rate of five per cent. only upon such actual advance.

Expectation of life, in the doctrine of life annuities, is the share or number of years of life, which a person of a given age may, upon an equality of chance, expect to enjoy. Consult *Inwood's Tables*.

Expediment, the whole of a person's goods and chattels, bag and baggage.

Expeditatæ arbores, trees rooted up or cut down to the roots.—*Fleta*, l. 2, c. xli.

Expedit reipublicæ ne suâ re quis male utatur. I. 1, 8, 2.—(It is for the public good that no one use his property badly.)

Expedit reipublicæ ut sit finis litium. Co. Litt. 303.—(It is for the public good that there be an end of litigation.) See LIMITATION.

Expeditate, to cut out the ball of a dog's fore-feet, for the preservation of the royal game.—*Manw.* c. xvi.

Expenditors, persons appointed by commissioners of sewers, to pay, disburse, or expend the money collected by the tax for the repairs of sewers, etc., when paid into their hands by the collectors, on the reparations, amendments, and reformations ordered by the commissioners, for which they are to render accounts when thereunto required. See Statute of Sewers, 23 Hen. VIII. c. 5.

Expensæ litis (*costs of suit*). See COSTS.

Expensis militum non levandis, etc., an ancient writ to prohibit the sheriff from levying any allowance for knights of the shire, upon those who held lands in ancient demesne. — *Reg. Orig.* 261.

Experientia per varios actus legem facit. Magistra rerum experientia. Co. Litt. 60.—(Experience by various acts makes law. Experience is the mistress of things.)

Experts, witnesses who give evidence upon matters of science; e.g., professed judges of handwriting.

Expilation, robbery; the act of committing waste upon land to the loss of the heir; also abstracting the goods of a succession.

Expiring Laws Continuance Acts. Acts so called and continuing for a further period—usually for one full year more—temporary acts which would otherwise expire, have for many years been passed at the end of each session of parliament. See the latest, 54 & 55 Vict. c. 60, which contains as many as forty temporary statutes, of which the more important are the Act 3 & 4 Vict. c. 89, exempting stock-in-trade from poor rates, the Ballot Act, 1872, the Corrupt Practices Prevention Acts, and the Employers Liability Act, 1880; the Regulation of Railways Act 1873, from which the railway commissioners long derived their temporary jurisdiction, being omitted, on the ground of the Act being, in 1888, made perpetual.

The practice of passing temporary acts is a very old one: e.g., the Statute of Distributions was at first temporary only.

Explees. See ESPLEES.

Expleta, Expletia, or **Explecia**, the rents and profits of an estate.—*Old Records*.

Explosive substances, as to injuries by, see 24 & 25 Vict. c. 97, ss. 9, 10, 54—5, c. 100, ss. 28—30, 64, 65.

The Explosives Act, 1875 (38 Vict. c. 17), now regulates the manufacture, keeping, sale, and conveyance thereof of gunpowder and other explosives, and the licensing and management of stores; and the Explosive Substances Act, 1883, 46 Vict. c. 3, greatly increases the punishment for causing or attempting to cause dangerous explosions, and allows an inquiry to be instituted before a justice of the peace by order of the Attorney-

General if he has ground for believing an offence against the act to have been committed, although no particular person may be charged with such offence.

Exposing in a public thoroughfare a person infected with a contagious disease is a common nuisance, and punishable accordingly.—4 *Steph. Com.* It is also punishable on summary conviction under the Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 126.

Exposing child under the age of two years. See 24 & 25 Vict. c. 100, s. 27.

Expositio, explanation.

Ex post facto [jure] (*from a law made after*), the thing prohibited was done.

Exposure of person. See INDECENT EXPOSURE.

Ex præcedentibus et consequentibus optima fit interpretatio. 1 Rol. Rep. 374.—(The best interpretation is made from the context.)

Express, that which is not left to implication; as express promise, express covenant.

Expressa nocent, non expressa non nocent. D. 50, 17, 195.—(Things expressed hurt, things not expressed do not.)

Express colour, in pleading. An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76, s. 64. Consult *Report of the Common Law Commissioners* (1850), 24, and see 3 *Steph. Com.*, bk. v., ch. x.

Expressa non prosunt quæ non expressa proderunt. 4 Co. 73.—(The expression of things of which, if unexpressed, one would have the benefit, is useless.)

Expressio eorum quæ tacitè insunt nihil operatur. Co. Litt. 210.—(The expression of those things which are tacitly implied has no effect.)

Expressio unius personæ est exclusio alterius. Co. Litt. 210.—(The mention of one person is the exclusion of another.)

Expressum facit cessare tacitum.—(What is expressed makes what is silent to cease.)

Expromission, a species of novation, as a creditor's acceptance of a new debtor, who takes the place of the old debtor, who is discharged.

Expromissor, a surety; bail.—*Civil Law.*

Expropriation, the surrender of a claim to exclusive property.

Ex provisione mariti (*from the provision of the husband*).

Expurgation, the act of purging or cleansing, as where a book is published without its obscene passages.

Ex relatione, on the report of: an expression affixed to cases which the reporter gives on the authority of another; as *ex relatione amici.*

Extend, to value the lands, etc., of one bound by a statute, who has forfeited his bond, at their yearly value, so that it may be known when the creditor will be paid his debt.—*Cowel.*

Extension, an indulgence by giving time to pay a debt, or perform an obligation.

Extenso manerii, 4 Edw. I. s. 1. It was a direction for the making of a survey of buildings, lands, commons, parks, woods, etc.

Extent or **Extendi facias** (*that you cause to be appraised at their full or extended value*), the peculiar remedy to recover debts of record due to the Crown; it differs from an ordinary writ of execution at the suit of a subject, because under it the body, lands, and goods of the debtor may be all taken at once, in order to compel the payment of the debt. It is not usual, however, to seize the body.

There are two kinds of Extents—*in chief*, and *in aid.* (1) Extent in chief. It issues from the Exchequer, and may bear *teste*, and be made returnable on any day certain in term or vacation (5 & 6 Vict. c. 86, s. 8). It directs the sheriff to take an inquisition or inquest of office, on the oaths of lawful men, to ascertain the lands, etc., of the debtor, and seize the same into the Queen's hands. The writ should be preceded by a *scire facias* in order to bring the debtor into Court, and afford him an opportunity to show cause against it; but where the debt is in danger of being lost the extent will be issued without a *scire facias* upon an affidavit of circumstances; and after the sheriff's return, the debtor, if he dispute the debt, or a third person, if he claim the property set forth in the inquisition, may enter an appearance and plead to the extent; issue is then joined, and it is decided either on demurrer or by a trial before a jury. If judgment be given for the Crown, it is that the subject take nothing by his traverse or plea; if given for the defendant or claimant, it is in award of *amoveas manus.* Error will lie upon the judgment provided the Attorney-General consent to the proceeding. Where there was no judgment it was the rule to issue a commission to ascertain what debt was due to the Crown; but by the 28 & 29 Vict. c. 104, s. 47, a commission to find a debt due to the Crown shall not be necessary for authorising the issue of an immediate extent, or of a writ of *diem clausit extremum*, and an immediate extent may be issued on an affidavit of debt and danger, and a writ of *diem clausit extremum* may be issued on an affidavit of debt and death, and on a fiat, as is thereby provided. It is en-

acted by 2 & 3 Vict. c. 11, that no debt due to the Crown on judgment, statute or recognizance, inquisition of debt, obligation, or specialty, or acceptance of office, shall affect any lands, tenements, or hereditaments, as to purchasers or mortgagees, unless and until such memorandum or minute thereof, as in the act provided, shall be registered as is therein provided; and provision is made in regard to the registration of a *quietus* for any Crown debt, and for Treasury certificates being granted exonerating lands from any further claim of the Crown. By the 28 & 29 Vict. c. 104, s. 48, it is provided that any Crown judgment, etc., or specialty, shall not affect any land, as to a *bonâ fide* purchaser for valuable consideration, or as to a mortgagee (with or without notice of such judgment, etc.), unless a writ of extent, or of *diem clausit extremum*, or other writ or process of execution, has been issued and registered before the execution of the conveyance or mortgage. By 29 Vict. c. 39, s. 42, where the estate of a public accountant is sold under writ of extent, and the purchase-money paid, the purchaser shall be exonerated from all further claims of the Crown.

There is also an *extent in chief in the second degree*, which is a proceeding by the Crown against the debtor of a Crown-debtor, against whom also an extent in chief has issued.

(2) Extent in aid. It issues, not at the suit of the Crown, like an extent in chief, but at the suit of Crown-debtor against a person indebted to himself; and it is grounded on the Statute of Extent, 33 Hen. IV. c. 39, and on the principle that the Crown is entitled to the debts due to the debtor. The practice is governed by 57 Geo. III. c. 117, and by a rule of the Court of Exchequer June 22, 1822, that the Crown-debtor must make oath that otherwise the debt will be lost.

There is a special writ of extent, which is issued in the event of the death of a Crown-debtor, and is called a *diem clausit extremum*, because it recites the death of the party. The sheriff is commanded to inquire, by a jury, concerning the chattels and lands of the deceased debtor, and seize them into the Crown's hands.—3 *Steph. Com.*

Extinguishment, the annihilation of a collateral interest, or the supersedure of one interest by another and greater interest, thing, or subject, is that out of which it is derived. It is of various natures as applied to various rights.

(1) Extinguishment of common. If he who is entitled to common appurtenant purchase any part of the land which is subject to his right in common, that right is extinguished for the whole: and so, if he release his right over any part of the land. But it has been justly doubted whether in any case (and especially if all persons who have common appurtenant in the same land concur in discharging some part of it), this legal trap should be allowed to operate.—*Burton's Comp.*, 8th ed., 352. If one of the tenants of a manor purchase any part of the land over which he has a right of common appendant, his right over the rest will continue. So, on the alienation of any part of land to which common is appendant or appurtenant (though the latter is less favoured by the old law), the right of common is preserved and apportioned. —1 *Bac. Ab.* 628. All incorporeal hereditaments of necessity, or arising by operation of law, and services, may be extinguished, excepting ways.

(2) Extinguishment of copyhold. When a tenant conveys to his lord, or does an act denoting his intention of not holding of his lord any longer, his copyhold is extinguished. When the lord does an act inconsistent with the nature of the tenure, e.g., conveys to the tenant the freehold, or releases to him his seignorial rights, an enfranchisement is effected. See COPYHOLD.

(3) Extinguishment of debt. A creditor, by accepting a higher security than he had before, extinguishes the first debt. And when judgment is given for a debt, it supersedes or extinguishes the previous obligation. So, if a *feme sole* creditor marry her debtor, or an obligee marry one of two joint obligors in a bond, or a debtor make his creditor, or *vice versâ*, his executor; in these cases the debt is extinguished.—*Plowd.* 184; 1 *Salk.* 304.

(4) Extinguishment of estates. If a person have a yearly rent out of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished; for no one can have a rent issuing out of his own land, though a person must have as high an estate in the land as in the rent, or the rent will not be extinct.—*Co. Litt.* 147. It appears that an estate by statute, recognizance, or *elegit*, may be extinguished by any act (as a deed of defeazance or of release), which extinguished the debt.—*Burt. Comp.* 373. The Judicature Act, 1873, s. 25 (4), provides that there shall not, after the commencement of that Act, be any merger by operation of law only, of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(5) Extinguishment of *interesse termini*. A mere *interesse termini* can neither promote nor hinder the merger of any estate, nor can itself, properly speaking, be surren-

dered; but it may be extinguished by surrender in law, or by assignment or release.—*Burt. Comp.* 364.

(6) Release by way of extinguishment. If my tenant for life make a greater estate than he is warranted in granting, as a lease to A. for life, remainder to B. and his heirs, and I release to A., this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder as well as of A.'s particular estate.—2 *Bl. Com.* 325.

Extirpatione, a judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it.—*Reg. Jud.* 13, 56.

Extocare, to grub up lands, and reduce them to arable or meadow.—*Mon. Angl.*, t. 2, p. 71.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. 10 Co. 102.—(Extortion is a crime when, by colour of office, any person extorts that which is not due, or more than is due, or before the time when it is due.)

Extorting money, etc., by menaces. See 24 & 25 Vict. c. 96, ss. 44—5, and THREATS.

Extortion [fr. *extorqueo*, Lat., to wrest away], any oppression under colour of right, as the demanding of a fee or present by colour of office. The Act 3 Edw. I. provides against extortion by the king's officers; and see 15 & 16 Vict. c. 87, ss. 3, 4; 32 Geo. II. c. 28; 33 Geo. III. c. 52, s. 62; 7 Wm. IV. and 1 Vict. c. 30, s. 19, which latter act prohibits masters of the Supreme Court from taking gratuities.

Ex totâ materiâ emergat resolutio. Wing. 238.—(Let the decision arise from the whole case.)

Extra costs, those charges which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court-fees, etc., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs. See INCREASE.

Extracta curiæ, the issues or profits of holding a court, arising from the customary fees, etc.—*Paroch. Antiq.* 572.

Extradition, the act of sending by authority of law a person accused of a crime to a foreign jurisdiction, where it was committed, in order that he may be tried there. It is recognized as a duty, independent of treaty, by international law, but is usually the subject of treaty terminable at one year's notice. Conventions have been entered into by this country with various foreign countries, including France, the United States (see 6 & 7 Vict. cc. 75, 76, repealed by Act of 1870), Germany, Belgium, Brazil, Italy, Denmark, Austria, Sweden, and Spain, for the apprehension and extradition of persons charged with particular offences. The Extradition Act, 1870 (33 & 34 Vict. c. 52), 'as to the whole of Her Majesty's dominions' provides (s. 2) that 'where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by order in Council, direct that this Act shall apply in the case of such foreign state.' The Act provides for the arrangements and procedure regarding extradition, and imposes various restrictions thereon, e.g., in regard to political offences. See an Amendment Act, 36 & 37 Vict. c. 60. Consult *Clarke on Extradition*, and *Chitty's Statutes*, vol. ii., tit. *Extradition*.

Extrajudicial [fr. *extra* and *judicium*, Lat.], out of the regular course of legal procedure. An extrajudicial dictum is the same as an obiter dictum; see OBITER DICTUM.

Extra legem positus est civiliter mortuus. Co. Litt. 130.—(He who is placed out of the law is civilly dead.)

Extraneus est subditus qui extra terram, i.e., *potestatem regis natus est.* 7 Co. 16.—(A foreigner is a subject who is born out of the territory, that is, government, of the king.)

Extraparochial [fr. *extra* and *parochia*, Lat.], outside of any parish. As to extraparochial highways, see 25 & 26 Vict. c. 61, s. 32; as to marriages, 23 & 24 Vict. c. 24; and as to the relief of extraparochial poor, see 5 & 6 Vict. c. 48, and 20 Vict. c. 19.

Extra-territoriality, immunity from a country's laws, such as that enjoyed by an ambassador. Consult *Wheaton's Inter. Law.*

Extra territorium jus dicenti non paretur impunè. 10 Co. 77.—(The sentence of one adjudicating beyond his territory cannot be obeyed with impunity.)

Extravagantes, those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII., successor of Clement V. The last collection was brought down to the year 1843, and was called the *common extravagantes*, notwithstanding that they were likewise incorporated with the rest of the canon law.—*Encyc. Lond.*

Extra Viam, out of the way.

Extra vires, beyond powers. See ULTRA VIRES.

Extumæ, reliques in churches and tombs.

Ex turpi causâ non oritur actio.—(No right of action arises from a base cause.)

Ex visitatione Dei (*by the visitation of God*).

Ex vi termini (*from the force or meaning of the expression*).

Ey, ea, or **ee**, an island.

Eye-witness, one who gives testimony to facts seen by himself.

Eyre, Justices in [fr. *eyre*, Fr.; *iter*, Lat.], the court of justices itinerant, which Bracton in many places calls *justiciarios itinerantes*; more commonly called in modern times the judges of assize, who have travelled on their several circuits since their first appointment by the statute of *nisi prius*, 13 Edw. I., st. 1, c. 30. The eyre also of the forest is nothing but the justice-seat, which is, or should, by ancient custom, be held every three years by the justices of the forest, journeying up and down for such purpose.—*Cowel.*

Ezardar, a farmer or renter of land in the district of Hindostan.—*Indian.*

F.

F, a stigma put upon felons with a hot iron, on being admitted to benefit of clergy; abolished by 7 & 8 Geo. IV. c. 28, s. 6.

Fabric lands [*ad fabricam reparandam*, Lat.], land given to provide for the rebuilding or repair of cathedrals and churches. Anciently, almost every person gave something by his will to be applied in repairing the fabric of the cathedral or parish church where he lived.—*Cowel.*

Facinus quos inquinat æquat.—(Guilt makes equal those whom it stains).

Facio, ut des (*I perform, that you may give*).

Facio, ut facias (*I do, that you may do*).

Fac simile (*make it like*). An exact copy, preserving all the marks of the original.

Fac simile probate, where the construction of a will may be affected by the appearance of the original paper, the Court will order the probate to pass in *fac simile*, as it may possibly help to show the meaning of the testator.

Fact, question of. See QUESTIONS OF FACT.

Facta armorum, feats of arms, jousts, tournaments, etc.—*Cowel.*

Facto, in fact; as where anything is actually done.—*Jacob.* And see DE FACTO.

Factor [fr. *facteur*, Fr.], a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale are called a consignment. He is a home factor when he resides in the same state or country with his principal, and a foreign factor when he resides in a different state or country. He differs from a broker in this, that he may buy and sell in his own name, and is entrusted with the possession and disposal of the goods, and has a special property in, and a lien on, them; yet neither can delegate his authority, unless conferred by usages of trade or the assent of his principal. Factors have no incidental authority to barter goods, or to pledge them for advances made to them on their own account, or debts due by themselves; but they may pledge them for advances made on account of their principal, or for advances to themselves to the extent of their own lien on the goods. And they may pledge their principal's goods for the duties and other charges due thereon.

The Factors Acts, that of 1823, 4 Geo. IV. c. 83; of 1825, 6 Geo. IV. c. 94; of 1842, 5 & 6 Vict. c. 39; and of 1877, 40 & 41 Vict. c. 39, passed with the object of facilitating commerce by enabling factors to sell or pledge goods entrusted to them for sale (see *Fuentes* v. *Montis*, *L. R.* 3 *C. P.*, 268, and *Johnson* v. *Credit Lyonais*, 3. *C. P. D.*, 268), were amended and consolidated by the Factors Act, 1889, 52 & 53 Vict. c. 45, extended to Scotland by the Factors (Scotland) Act, 1890, 53 & 54 Vict. c. 40.

By ss. 75 & 78 of the Larceny Act, 1861, 24 & 25 Vict. c. 96, a factor fraudulently obtaining an advance on the property of his principal is liable to seven years' penal servitude.

Factorage, the wages, commission, or allowance made to a factor by a merchant.

Factory, a place where a number of traders reside in a foreign country for the convenience of trade; also a building in which goods are manufactured.

The Factory and Workshop Act, 1878, 41 Vict. c. 16, which contains 107 sections and 6 schedules, consolidates, with a few amendments, the seventeen Acts from 42 Geo. III. c. 73 (Addington's Act) to 37 & 38 Vict. c. 44 (The Factory Act, 1874), by which the labour of women, young persons, and children has been from time to time regulated, the education of children indirectly attained, and the fencing of machinery prescribed. This Act was amended, as to White Lead Factories and Bakehouses, by the Factory and Workshop Act, 1883, 46 & 47 Vict. c. 53,

and generally by the Factory and Workshop Act, 1891, 54 & 55 Vict. c. 75. By the latter Act the powers of factory inspectors are increased, means of escape from fire are directed to be provided, and the employment of children under eleven, and of women within four weeks after childbirth, is prohibited. Moreover, by s. 24, weavers in the cotton, worsted, or woollen, or linen, or jute trade, if paid by the piece, are entitled to have supplied to them with their work 'sufficient particulars to enable them to ascertain the rate of wages at which they are entitled to be paid.' See *Redgrave* or *Notcutt on the Factory Act; Chitty's Statutes*, vol. ii., tit. '*Factories*.'

The use of steam whistles for summoning or dismissing factory hands requires the sanction of local authorities, by virtue of 35 & 36 Vict. c. 61.

Factum, a person's act or deed; anything stated or made certain.

Factum à judice quod ad ejus officium non spectat, non ratum est. 10 Co. 76.—(An action of a judge which relates not to his office is of no force.)

Factum non dicitur quod non perseverat. 5 Co. 96.—(That is not called a deed which does not continue operative.)

Factum unius alteri noceri non debet. Co. Litt. 152.—(The deed of one should not hurt another.)

Facultas probationum non est angustanda. 4 Inst. 279.—(The facility of proofs is not to be narrowed.)

Faculties, Court of, a jurisdiction or tribunal belonging to the Archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various powers under 25 Henry VIII. c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a churchyard, to remove bodies previously buried.—4 *Inst.* 337. See *Phillimore's Eccl. Law.*

Faculty, a license or authority; in ecclesiastical law a privilege granted by the ordinary to a man by favour and indulgence to do that which by law he may not do, e.g., to marry without banns, to erect a monument in a church, etc.

Faculty of advocates, the college or society of advocates in Scotland. See ADVOCATE.

Fæder-feoh, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage: i.e., it reverted to her family in case she returned to them.—*Anc. Inst. Eng.*

Faggot, a badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited.—*Cowel.*

Faggot votes; a faggot vote is where a man is formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he is enabled to buy a property, and at the same moment mortgage it to its full value for the mere sake of the vote; such a vote is called a faggot-vote. A fraudulent conveyance for this purpose does not give the vote (see 7 & 8 Wm. III. c. 25, s. 7; 10 Anne c. 23), neither does a fraudulent devise by will (see 53 Geo. III. c. 49); and the Representation of the People Act, 1884, 48 Vict. c. 3, s. 4, provides, with savings for existing voters, and acquisition of interest by descent, etc., and for trade, that a *rent charge*, except a whole tithe rent-charge, shall no longer confer a vote, and that only one of two or more joint-owners of an estate may vote.

Faida, malice or deadly feud.

Failing of record, when an action is brought against a person who alleges in his plea matters of record in bar of the action, and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz., denies there is any such record: upon which the defendant has a day given him by the Court to bring it in; if he fail to do it, then he is said to fail of his own record, and the plaintiff is entitled to sign judgment.—*Termes de la Ley.*

Faint action, a feigned action.—*Co. Litt.* 361.

Faint pleader, a fraudulent, false, or collusive manner of pleading to the deception of a third person.—3 *Edw. I.* c. 19.

Fair pleader. See BEAU-PLEADER.

Fairs [fr. *foire*, Fr.; *forum nundinæ*, Lat.]. These institutions are very closely allied to markets. A fair is a greater species of market, recurring at more distant intervals. No fair can be held without grant from the Crown, or a prescription which supposes such grant. Before a patent is granted it is usual to have a writ of *ad quod damnum* executed and returned, that it may not be issued to the prejudice of another fair or market already existing. The grant usually contains a clause that it shall not be to the hurt of another fair or market; but this clause, if omitted, will be implied: for if the franchise occasion damage either to the Crown, or a subject, in any respect, it will be revoked; and a person whose ancient title is prejudiced is entitled to have a *scire facias* in the Queen's name to repeal the letters-patent. If Her Majesty grant power to hold a fair or market in a particular place, the lieges can resort to no other even though it be inconvenient. But if no

place be appointed, the grantees may keep the fair or market where they please, or where they can most conveniently. Times of holding fairs and markets are either determined by the letters-patent appointing the fair or market, or by usage, or under the 36 & 37 Vict. c. 37 (repealing 31 & 32 Vict. c. 51), by the Secretary of State. See 'The Markets and Fairs Clauses Act' (10 & 11 Vict. c. 14). 'The Metropolitan Fairs Act, 1868' (31 & 32 Vict. c. 106), was passed for the prevention of the holding of unlawful fairs within the limits of the Metropolitan police district.

As to the powers of local authorities with reference to fairs, see 38 & 39 Vict. c. 55, s. 167, and as to the weighing of cattle see Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

The 34 Vict. c. 12, proceeding on the preamble that 'certain of the fairs held in England and Wales are unnecessary, are the cause of grievous immorality, and are very injurious to the inhabitants of the towns in which such fairs are held,' gives power to the Home Secretary to abolish any fair on representation of the magistrates, and with consent of the owner; and many fairs have been abolished under the powers of the Act.

Fait [fr. *factum*, Lat.], a deed or writing.

Fait enrolle, a deed enrolled, as a bargain and sale of freeholds.—1 *Keb.* 568.

Faitours, evil-doers; idle livers; vagabonds.—*Termes de la Ley.*

Falang, jacket or close coat.—*Blount.*

Falcatura, one day's mowing of grass, a customary service to the lord by his inferior tenants. *Falcata*, the fresh grass mowed and laid in swathes. *Falcator*, the tenant-mower. —*Ken. Glos.*

Fald, or **Falda**, a sheep-fold.—*Cowel.*

Faldage [fr. *faldagium*, Lat.], a fold-course, i.e., common of pasture for sheep.

Faldæ cursus, a sheep-walk.—2 *Vent.* 139.

Fald-fee, a composition paid anciently by tenants for the privilege of faldage.—*Cowel.*

Faldisdory [fr. *falde*, Sax., a hedge, and *stop*, a place], the bishop's seat or throne within the chancel.

Faldstool, or **Foldstool**, a place at the south side of the altar, at which the sovereign kneels at his coronation.

Faldworth, a person of age, that he may be reckoned of some decennary.—*Du Fresne.* See Decennary.

Falesia, a hill, or down by the sea-side.—*Old Records.*

Falk-land. See Folkland.

Falkland Islands. See 6 & 7 Vict. c. 13, amended by 23 & 24 Vict. c. 121.

Fall of land, a quantity of land six ells square superficial measure.

Fallow-land, land ploughed, but not sown, and left uncultivated for a time after successive crops.

Fallum, an unexplained term for some particular kind of land.—*Cowel.*

Falmotum. See Folkemote.

Falsa demonstratio non nocet. 6 T. R. 766. —(False description does not vitiate.)

Falsa orthographia, sive falsa grammatica, non vitiat concessionem. 9 Co. 48.—(Bad spelling or bad grammar does not vitiate a grant.)

False imprisonment, restraining personal liberty without lawful authority, for which offence the law has not only decreed a punishment as a public crime, but has also given a private reparation to the party as well by removing the actual confinement for the present by *habeas corpus*, as by subjecting the wrongdoer to an action of trespass, etc., usually called an action of false imprisonment, on account of the damage sustained by the loss of time and liberty.—Consult *Addison on Torts.*

False judgment, writ of, a process that lay by way of appeal, to the Superior Courts from inferior Courts not of record, to amend errors in their proceedings.

False Latin. When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious.—5 *Rep.* 121; 2 *Nels.* 830.

False news, spreading, to make discord between the sovereign and nobility, or concerning any great man of the realm, was a misdemeanour, punishable at common law by fine and imprisonment; which was confirmed by statutes Westm. 1, 3 Edw. I. c. 34; 2 Rich. II. st. 1, c. 5; and 12 Rich. II. c. 11.

False oath. See Perjury.

False personation, to obtain property. See Personation.

False plea. See Sham Plea.

False pretences, *obtaining property, etc., by.* This offence, though closely allied to larceny, is distinguishable from it, as being perpetrated through the medium of a mere fraud; it is a misdemeanour at common law, and punishable by fine and imprisonment. By 24 & 25 Vict. c. 96, s. 88, whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanour, and liable to be kept in penal servitude for the term of three (now five by 27 & 28 Vict. c. 47) years, or to be imprisoned for any term not exceeding two

years. In order to be convicted under this section the accused must have made a false pretence of an existing fact, and the money, etc., must have been obtained by means of such false pretence.

False Prophecies, with intent to disturb the peace, were unlawful, as raising enthusiastic jealousies in the people, and terrifying them with imaginary fears. They were punishable as misdemeanours by 5 Eliz. c. 15, repealed by the Statute Law Revision Act, 1863.

False representation. See DECEIT.

False return by a sheriff, mayor, etc., to a writ is remedied by a special action on the case. See *Bullen and Leake on Pl.*, 4th ed., Part II., p. 476.

False signal, or **lights,** exhibited with intent to bring ships into danger is a felony punishable with penal servitude for life.—24 & 25 *Vict.* c. 97, s. 47.

False verdict. Formerly, if a jury gave a false verdict, the party injured by it might sue out a writ of attaint against them, either at common law or on the statute 11 Hen. VII. c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict; but not where the jury erred merely in point of law, if they found according to the judge's direction. The practice of setting aside verdicts and granting new trials, however, so superseded the use of attaints, that there is no instance of one to be found in our books of reports later than in the time of Elizabeth, and it was altogether abolished by 6 Geo. IV. c. 50, s. 60.

False weights and measures. See WEIGHTS AND MEASURES.

Falsi crimen, fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed:—(1) By words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures.

Falsification of Accounts Act, 1875, 38 & 39 Vict. c. 24. See ACCOUNTS, FALSIFICATION OF.

Falsifying judgments, reversing them.

Falsifying pedigree, upon which title does or may depend, punishable by 22 & 23 Vict. c. 35, s. 24.

Falsifying a record, a high offence against public justice, punishable by 24 & 25 Vict. c. 98, ss. 27, 28.

Falsonarius, a forger.—*Hov.* 424.

False retorno brevium, a writ that lay against a sheriff, who had execution of process for a false return.—*Reg. Jud.* 43.

Famacide [fr. *fama*, Lat., reputation, and *cædo*, to kill], a slanderer.—*Scott.*

Famosus libellus, an infamous libel.

Fanatio. See FENCE-MONTH.

Faqueer, or **Fakir,** a poor man, mendicant; a religious beggar.—*Indian.*

Farandman, a traveller or merchant stranger.—*Skene.*

Fardel of land, the fourth part of a yard-land. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land.—*Comp. Lawy.* 57.

Fardingdeal, or **Farundel of land,** the fourth part of an acre of land.—*Spelm.*

Fare, a voyage or passage by water; also the money paid for a passage either by land or by water.—*Cowel.*

Railway fares must be published at stations, by 31 & 32 Vict. c. 119, s. 16. Travelling without prepayment and *with intent* to avoid payment is punishable on summary conviction, by the Regulation of Railways Act, 1889, replacing but not repealing 8 Vict. c. 20, s. 103.

Farinagium, toll of meal or flour.—*Jacob.*

Farleu, money paid by tenants in lieu of a heriot. It is often applied to the best chattel, as distinguished from *heriot* the best beast.—*Cowel.*

Farlingarii, whoremongers and adulterers.

Farm, or **Ferm** [fr. *firma*, Lat.; *feorme*, Sax., food, and *feorman*, to feed], land taken upon lease under a rent, generally annual, payable by the tenant. It is a collective word, consisting of many things, as a messuage, land, meadow, pasture, wood, common, etc. In Lancashire a farm was called *fermholt*; in the north, a *tack*; and in Essex, a *wike*.—*Termes de la Ley.*

Farm let, to let to be farmed: the full phrase is 'demise, sett, and to farm let.'

Farmer, one who cultivates hired land, also the lessee of taxes or tolls.

Faro, a game of chance in vogue in the eighteenth century; an unlawful game by 12 Geo. II. c. 28, where it is spelt 'Pharaoh.'

Farriers. As to the duties of common farriers, see *Raym.* 654, and *Oliphant on Horses*, 3rd ed., 233 *et seq.*

Farthing [fr. *feowen*, Sax., four], the fourth part of a penny.

Farthing of Gold, an ancient coin, containing in value the fourth part of a noble.—9 *Hen. V.* c. 7.

Farthing, or **Farthingdell of land,** a quantity of land, the extent of which is not known. Some say it is a quarter of an aerc.

Farundel of land. See FARDINGDEAL.

Faryndon Inn, the ancient appellation of Serjeants' Inn, Chancery Lane.

Fasius, a faggot of wood.—*Mon. Angl.* tom. ii., 238.

Fast-day, a day of mortification by religious abstinence. See a list of Church of England Fast-Days in the Prayer-Book Calendar scheduled to 24 Geo. III. c. 23, and see also 5 & 6 Edw. VI. c. 3. Fast-days may also be appointed on special occasions by Royal proclamation. *R. G. H. T.* 1853, r. 174, recognized such days, and so do *R. S. C.* 1883, Ord. LXIII. r. 6 and Ord. LI. r. 18 of the County Court Rules, by the direction that offices of the Court shall be open 'every day, except . . . . all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.' The last fast-day so appointed was on account of the Indian Mutiny in 1857, enjoined by proclamation published in the *Gazette* of September 25th.

Fastens een or **even** [fr. *vastal-abend*, low Sax.], Shrove-Tuesday, the succeeding day being Ash-Wednesday, the first of the Lenten fast.

Fastermans, or **Fasting-men** [*homines habentes*, Lat.], men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon policy, were *fast* bound to answer for each other's peaceable behaviour. —*Encyc. Lond.*

Fasti, *fas* signifies divine law; the epithet *fastus* is properly applied to anything in accordance with divine law, and hence those days upon which legal business might without impiety (*sine piaculo*) be transacted before the prætor, were technically denominated *fasti dies*, i.e., lawful days. Consult *Smith's Dict. of Antiq.*

Fatetur facinus qui judicium fugit. 3 Inst. 14.—(He who flees judgment confesses his guilt.)

Fatua mulier, a whore.—*Du Fresne.*

Fatuous persons, idiots.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit. 4 Co. 128.—(Fatuous, among our jurisconsults, is understood for a man not of right mind; and he is called '*fatuus*' who is altogether foolish.)

Fautors, favourers or supporters of others; abettors of crimes, etc.—*Cowel.*

Favours, challenge to. See CHALLENGE.

Favorabilia in lege sunt fiscus, dos, vita, libertas. Jenk. Cent. 94.—(Things favourably considered in law are the treasury, dower, life, liberty.)

Favorabiliores rei potius, quam actores, habentur. D. 50, 17, 125.—(The condition of the defendant must be favoured rather than that of the plaintiff.) In other words, *Melior est conditio defendentis.*

Favorabiliores sunt executiones aliis processibus quibuscunque. Co. Litt. 289.—(Executions are preferred to all other processes whatever.

Feal, tenants by knight-service, who swore to their lords to be *feal* and *leal*, i.e., faithful and loyal.

Feal and Divot, a right in Scotland, similar to the right of turbary in England, for fuel, etc.

Fealty [fr. *fidelitas*, Lat.; *feauté*, Fr.], the *special* oath of fidelity or mutual bond of obligation between a lord and his tenant; the general oath being the allegiance performed by every subject to his sovereign, but this is better known by its more significant appellation of the oath of allegiance. Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal-oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Fealty comprehends the following obligations, viz.: (1) *Incolume*, that the tenant do no bodily harm to his lord; (2) *Tutum*, that he do no secret damage to him in his house; (3) *Honestum*, that he damage not his reputation; (4) *Utile*, that he do no damage to him in his possessions; (5) *Facile*, and (6) *Possibile*, that he render it easy for the lord to do any good, and not make that impossible to be done which was before in his power to do.—*Leg. Hen. I.* c. 5.

Feasts, anniversary days of rejoicing, either on a civil or religious occasion. Opposed to fasts. Our feasts are either (1) *immovable*, such as Christmas-day, the Circumcision, Epiphany, Candlemas-day, Lady-day, All Saints, and All Souls, besides the days of the several apostles, St. Peter, St. Thomas, etc.: these are always celebrated on the same day of the year; or (2) *movable*, such as Easter, which fixes all the rest, as Palm Sunday, Good Friday, Ash Wednesday, Sexagesima, Ascension-day, Pentecost, Trinity Sunday, etc. The four principal immovable feasts of the year, which are commonly assigned in England for the payment of rents on leases, are the Annunciation of the Blessed Virgin Mary, or Lady-day, being the 25th of March; the Nativity of St. John the Baptist, held on the 24th of June; the feast of St. Michael the Archangel, on the 29th of September; and Christmas-day on the 25th of December.—5 & 6 *Edw. VI.* c. 3; 3 *Jac. I.* c. 1; and 12 *Car. II.* c. 30.

Federal Government. When two or more sovereign or independent states mutually agree not to exercise certain powers incident to their several sovereignties, but to delegate the exercise of those powers to some person or body chosen by them jointly, there is said to be a federal union of those states, and the person or body to whom the exercise of such powers is delegated is called the Federal Government. The Swiss Confederation, and the United States of North America, are instances of federal Governments. A 'Federal Council of Australasia Act,' 48 & 49 Vict. c. 60, was passed in 1885.

Fee [fr. *feoh*, Sax.; *fee*, Dan., cattle; *feudum*, Mod. Lat.; *feu*, Scot.], property peculiar; reward or recompense for services. See FEES. Also an estate of inheritance divided into three species: (1) fee-simple absolute; (2) qualified or base fee; (3) fee-tail, formerly fee-conditional. See FEE-SIMPLE.

Fee-base. See BASE FEE.

Fee-conditional. See CONDITIONAL FEE.

Feed, to lend additional support; to strengthen *ex post facto*; 'the interest when it accrues *feeds* the estoppel.' See *Doe* d. *Christmas* v. *Oliver*, 5 *M. & R.* 202.

Fee-expectant, where lands are given to a man and his wife, and the heirs of their bodies.

Fee-farm-rent, where an estate in fee is granted, subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation; and such rent appears to be called fee-farm, because a grant of land reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years.—1 *Steph. Com.*

Fee-simple, a freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein, for *omne majus continet in se minus.* It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments as well as in personalty, as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another.

Littleton, in his *Tenures* (L. i., c. 1, s. 1), gives a description of this estate, which appears to have been adopted by every subsequent writer. His language is this:—

A person who holds 'in fee simple is he which hath lands or tenements to hold to him and his heirs for ever. And it is called in Latin *feodum simplex*, for *feodum* is the same that inheritance is, and *simplex* is as much as to say lawful or pure. And so *feodum simplex* signifies a lawful or pure inheritance. For if a man would purchase lands or tenements in fee-simple it behoveth him to have these words in his purchase, to have and to hold to him and to his heires; for these words (his heires) make the estate of inheritance. For if a man purchase lands to have and to hold to him for ever; or by these words, to have and to hold to him and his assignees for ever: in these two cases he hath but an estate for term of life, for that there lack these words (his heires), which words only make an estate of inheritance in all feoffments and grants.'

In practice the phrase universally adopted in the designation clause of deeds, in order to transfer a fee-simple absolute, was, before the Conveyancing Act of 1881—'to A., his heirs, and assigns, for ever.' (The word 'assigns,' however, was not material, and might have been omitted, for it gave no other privilege to the owner than that which the law confers upon him by virtue of his estate, as entitling him to alien or transfer it; and the phrase 'for ever' not being limitary but simply declaratory of the time during which the property shall be enjoyed, might also have been omitted.)

The necessity of any explanatory words is done away with by the Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. c. 41, s. 51, which enacts that 'in a deed' it shall be sufficient in the limitation of an estate in fee-simple to use the words, 'in fee-simple,' without the word 'heirs,' but this section applies only to conveyances made after the commencement of the Act; i.e., by s. 2, on or after the 1st January, 1882.

The incidents of a fee-simple are:—an uncontrollable power of management and of alienation, whether by gift, sale, or will; descent to the heirs of an intestate owner; and escheat (see ESCHEAT) for want of heirs.

Fee-tail. See TAIL.

Fees, certain perquisites allowed to officers in the administration of justice, as a recompense for their labour and trouble, ascertained either by Acts of Parliament, by rule or order of Court, or by ancient usage; in modern times frequently commuted for a salary, e.g., by the Justices' Clerks Act, 1877.

Although, however, the offices of a Court may be paid by salary instead of by fees, the obligation of suitors to pay fees usually remains, these fees being paid into the fund out of which the salaries of the officers are defrayed. In the Supreme Court they are collected by means of stamps under s. 26 of the Judicature Act, 1875, and a Treasury Order of July 1884, a Judicial Order of the same year fixing the amount.

The mode of collecting fees in a public office is under the Public Office Fees Act, 1879, 42 & 43 Vict. c. 58 (repealing and replacing the Public Office Fees Act, 1866), by stamps or money, as the Treasury may direct.

The fees of the steward of a manor are regulated entirely by custom, and a customal or list of fees to be taken, under every circumstance, is generally handed down from steward to steward. When the steward charges enormously, the copyholder may bring an action on the case to recover the excess, and it has been suggested that an indictment would lie for extortion *colore officii*. The fees of the steward of a manor who is a solicitor, but acts in the character of a steward only, are not taxable under 6 & 7 Vict. c. 73, s. 37. In transactions where these fees are large or numerous a special agreement is generally made.—*Allen* v. *Aldridge*, 5 *Beav.* 401.

The Copyhold Act, 1887, 50 & 51 Vict. c. 73, s. 27, and schedule, provides a scale of compensation to stewards in case of enfranchisements of copyholds effected after the 31st December, 1887, compensation on enfranchisements before that date being regulated chiefly by s. 19 of the Copyhold Act of 1852.

As to barristers' fees, see BARRISTER; and as to Solicitors' Fees, see COSTS.

Feigned action. See FAINT ACTION and FEIGNED ISSUE.

Feigned issue, a proceeding whereby an action was supposed to be brought by consent of the parties to determine some disputed right without the formality of pleading, saving thereby both time and expense. It might be ordered either by a Court of Law or Equity, or by a judge under the Interpleader Act, 1 & 2 Wm. IV. c. 58. Before the 8 & 9 Vict. c. 109, s. 19, questions of fact were often tried by means of a pretended wager between the parties interested. But by the last-named act, in every case, where any Court of Law or Equity desired to have any question of fact decided by a jury, the Court might direct a writ of summons to be sued out by such person as it thought ought to be plaintiff, against such person as it thought ought to be defendant, and thereupon proceedings went on as upon a feigned issue.

Felagus, a companion, but particularly a friend who was bound in the *decennary* for the good behaviour of another.

Feld, field; in composition, wild.—*Blount.*

Fellow-servant. At common law a master is not liable to his servant for injury caused by the negligence of a fellow-servant. A foreman was held to be a fellow-servant within this rule, but this state of the law is altered by the Employers' Liability Act, 1880, 43 & 44 Vict. c. 42, limited to expire on the 31st December, 1887, but continued by successive Expiring Laws Continuance Acts, and lastly continued until 31st Dec. 1892.

Felo de se (*a felon with respect to himself*), one who feloniously commits suicide. The barbarous mode of burying such persons, in a place where four roads met, with a stake driven through their bodies, was abolished by 4 Geo. IV. c. 52, which directed burial in the churchyard or other burial ground (without divine service) between the hours of nine and twelve at night. The Interments (Felo de se) Act, 1882, 45 & 46 Vict. c. 19, repealed and re-enacted the above Act, omitting the provisions as to the hours of burial, and allowing, by permission of the ordinary, a religious service, the Prayer Book expressly forbidding the use of the Burial Service therein contained in the case of those who die 'laying violent hands on themselves.' Escheat or forfeiture for felony is abolished by 33 & 34 Vict. c. 23. A Coroner's Inquest (see CORONER) must be held in every case of suicide, and in the absence of evidence of unsoundness of mind, the verdict of *felo de se* must still be directed and returned.

To attempt to commit suicide is a misdemeanour at common law (*Reg.* v. *Burgess*, *L. & C.* 258).

Felon [fr. *felon*, Fr.; *felo*, Mod. low Lat.; *fel.*, Sax.], one who has committed felony. See FELONY.

Felonia implicatur in quâlibet proditione. 3 Inst. 15.—(Felony is implied in every treason.)

Felonia, ex vi termini significat quodlibet capitale crimen felleo animo perpetratum. Co. Litt. 391.—(Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.)

Felony [fr. *félonie*, Fr.; *felonia*, Lat.; some deduce it fr. φῆλος, Gk., a deceiver, and *fallo*, Lat., to deceive; *Spelman* derives it fr. the Teutonic or German *fee*, a fieu or fief, and *lon*, price or value], originally the state of having forfeited lands and goods to the Crown upon conviction for certain offences, and then, by transition, any offence upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law, as distinguished from misdemeanour, upon conviction for which no forfeiture followed. All indictable offences are either felonies or misdemeanours, but a material part of the distinction is taken away by 33 & 34 Vict. c. 23, which abolishes forfeiture for felony, and provides for the administration of the estates of felons while undergoing sentence.

The only remaining distinctions between

a felony and a misdemeanour appear to be that it is a crime to a conceal a felony (see MISPRISION); that felony must be pleaded to personally; that a jury trying felony may not separate before verdict; and that the prisoner on conviction for felony has a right to be heard before judgment.

Feme or **Femme**, a woman. See WOMAN.

Feme-covert, a married woman. See MARRIED WOMAN.

Feme-sole, an unmarried woman.

Fence, a hedge, ditch, or other enclosure of land for the better manurance and improvement of the same. As to the larceny or malicious destruction of fences, see 24 & 25 Vict. c. 96, ss. 34, 35, and c. 97, s. 25.

Fencing machinery. See MACHINERY.

Fence-month or **Defence-month**, a time during which deer in forests do fawn; when hunting them is unlawful. It begins fifteen days before Old Midsummer, and ends fifteen days after it.—*Manw.*, pt. 2, c. xiii.

Feneration [fr. *fœneratio*, Lat.], usury; the gain of interest; the practice of increasing money by lending.

Fengeld, a tax or imposition, exacted for the repelling of enemies.

Feod or **Feud**, the right which the vassal had in land, or some immovable property of his lord, to use the same and take the profits thereof, rendering unto the lord such duties and services as belonged to the particular tenure; the actual property in the soil always remaining in the lord.—*Spelm. Feuds and Tenures.*

Feodal, of or belonging to the feod or feud.

Feodal system. See FEUDAL SYSTEM.

Feodality, fealty. See FEALTY.

Feodary, or **Feudary**, an officer of the Court of Wards, appointed by the master of that Court, under 32 Hen. VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the kings' widows their dower, and received all the rents, etc. Abolished by 12 Car. II. c. 24.

Feodatory, or **Feudatory**, the tenant who held his estate by feudal service.

Feodum est quod quis tenet ex quâcunque causâ sive sit tenementum sive reditus. Co. Litt. 1.—(A fee is that which any one holds from whatever cause, whether tenement or rent.)

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura. Litt. s. 1.—(A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or pure; and thus fee-simple is the same as a lawful inheritance, or pure inheritance.)

Feodum talliatum, i.e., *hæreditas in quandam certitudinem limitata.* Litt. s. 13.—(Fee-tail; that is, an inheritance limited in a definite descent.)

Feodum. See FEOD.

Feodum, or **Feudum antiquum**, a feud which devolved upon a vassal from his intestate ancestor.

Feodum laicum, a lay-fee.

Feodum militis, a knight's-fee.

Feodum, or **Feudum novum**, a feud acquired by a vassal himself.

Feoffee, one put in possession.

Feoffee to uses, the person in whom, before the Statute of Uses, the legal seisin or feudal tenancy of the land was vested, the substantial and beneficial ownership or use being in the *cestui que use*. The statute destroyed the estate of the feoffee to uses, and conveyed the possession to the *cestui que use*, who has now the legal estate, his use being executed by the statute. See USE.

Feoffer, one who gives possession of anything.

Feoffment [fr. *feoffare*, to give a feud], a deed (29 Car. II. c. 3, s. 1, and 8 & 9 Vict. c. 106, s. 3) evidencing and explaining the transmuting of the possession of a freehold estate, the transmutation being effected by a ceremony technically called livery of seisin. Since, however, the 8 & 9 Vict. c. 106, all real property, as regards conveyance of the immediate freehold thereof, is transferable as well by grant as by livery.

A feoffment was a tortious conveyance, i.e., if a person attempted to convey by it a greater freehold than he had, he forfeited the estate of which he was seised; but now it is a rightful (*droiturel*) or innocent conveyance, transferring only the estate which the feoffer can lawfully convey, being void *pro tanto* as to the excess, and so operating no forfeiture.—8 & 9 *Vict.* c. 106, s. 4.

Feoffment to uses. See FEOFFEE TO USES.

Feoffor. See FEOFFER.

Feoh, or **Fioh**, cattle, money.

Feorme, a certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter.—*Spelman on Feuds*, c. 7.

Feræ naturæ, Animals. Beasts and birds of a wild disposition, such as deer, hares, coneys in a warren, pheasants, partridges, etc., as distinguished from those *domitæ naturæ*, or tame, such as horses, sheep, poultry, etc. They are not whilst living the

subjects of absolute property, so that they cannot be the subject of larceny, nor are they liable to distress for rent. But a man may acquire a qualified property in them, either, (1) *Per industriam*, by his reclaiming and making them tame by art and industry, or by so confining them that they cannot escape, e.g., deer in a park, hares or rabbits in an enclosed warren, etc. The property in them only continues so long as they remain in a man's actual possession, but ceases if they regain their liberty, unless they have *animus revertendi*, as in the case of pigeons, tame hawks, etc. (2) *Ratione impotentiæ*, on account of their inability, as when birds, coneys, etc., make their nests or burrows on a man's land, and have young ones, then he has a qualified property in the young until they can fly or run away. (3) *Propter privilegium*, when a man has the privilege of hunting, taking, and killing certain wild animals, usually called game, in exclusion of other persons. He has a transient property in them so long as they continue within his liberty, and may prevent any stranger from taking them therein; but the instant they depart from his liberty his qualified property in them ceases.

Of animals *feræ naturæ* when dead, reclaimed, or confined, if they are fit for food, larceny may be committed at common law. See 24 & 25 Vict. c. 96, ss. 11—24.

With regard to injuries inflicted by savage animals and the responsibility of their owner therefor, if a man be possessed of an animal absolutely *feræ naturæ*, as a tiger, he is an insurer, and responsible for any damage done by it; but if there be an animal of a kind generally amenable, but the individual beast be accustomed to do mischief, it must be proved that he was known to be so by his master. Such was the rule universally until the 28 & 29 Vict. c. 60; since then, in the case of injury to sheep and cattle by dogs, it need not be shown that the offending animal was previously given to do hurt.

Ferdella terræ, a fardel-land; ten acres; or perhaps a yard-land.—*Cowel.*

Ferdingus, apparently a freeman of the lowest class, being named after the *cotseti*.—*Anc. Inst. Eng.*

Ferdwit [fr. *ferd*, Sax., army, and *wite*, punishment], quit of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition. —*Cowel.*

Ferise, holidays; generally speaking, days or season during which free-born Romans suspended their political transactions and their law suits, and during which slaves enjoyed a cessation from labour.—*Cic. de Leg.* ii. 8, 12.

Ferling, the fourth part of a penny; also the quarter of a ward in a borough.—*Old Records.*

Ferlingata, a fourth part of a yard-land.

Ferlingus, or **Ferlingum**, a furlong, which see.—*Co. Litt.* 5 *b.*

Ferm, or **Fearm**, a house or land or both let by lease.—*Cowel.*

Fermary, a hospital.—*Jacob.*

Fermier, one who farms any public revenue in France.

Fermisona, the winter season for killing deer.

Fern. Unlawfully and maliciously setting fire to growing fern or to a stack of fern is a felony. See 24 & 25 Vict. c. 97, ss. 16, 17.

Fernigo, a piece of waste ground where ferns grow.—*Cowel.*

Ferrets, are not the subjects of larceny.—2 *Steph. Com.*

Ferriage, the fair paid at a ferry.

Ferry, the right to carry persons and their goods in boats across a river, and to take toll for such carriage. It is a franchise, and can only be created by license from the Crown or by Act of Parliament, but the owner if he lose his traffic by the competition of a railway bridge can get no compensation under the Lands Clauses Act (*Hopkins* v. *Great Northern Railway Co.*, 2 *Q. B. D.* 224). As to the duties of common ferrymen, see 1 *Shower*, 140.

Ferspeken, to speak suddenly.—*Leg. H. I.* c. 61.

Fesance, an act.

Festa in cappis, grand holidays, on which choirs wore caps.—*Jacob.*

Festing-men. See FASTING-MEN.

Festing-penny [fr. *festnian*, Sax., to confirm], earnest given to servants when hired or retained in service.

Festinatio justitiæ est noverca infortunii. Hob. 97.—(Hasty justice is the stepmother of misfortune.)

Festinum remedium, a prompt redress.

Festum (*a feast*).

Festum stultorum, the feast of fools.

Feu, or **Few**, a free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Feu*, in Scotland, means vassal tenure, in contradistinction to ward-holding, or military tenure, being that holding where the vassal, in place of military service, makes a return in money which is called the feu-duty or feu-annual. In Scotland it is believed that building land is generally granted on feu not on lease, so that the landlord granting land for building has not, as in England, a reversion, but grants the land in perpetuity in consideration of a perpetual annual payment.

Feudal system, that scheme of tenure which the Conqueror perfected in this country, thereby displacing the Saxon laws of property, and which was the chief institution of the middle ages. See FEOD and TENURE, and *Craig de Feudis, passim.* The main incidents of the feudal system were not expressly abolished in England until 12 Car. II. c. 24.

Feud-bote, a recompense for engaging in a feud or quarrel. See *Cowel.*

Feudist, a writer on feuds, as Cujacius, Spelman, etc.

Feudum. Fidelis ero verè domino vero meo.—(A fee. I will be truly faithful to my true lord.)

Feuds, Book of, published during the reign of Henry III., about the year 1152. 'While most of the nations of Europe referred to the Book of Feuds as the grand code of law by which to correct and amend the imperfections in their own tenures, there is not in our law-books any allusion that intimates the existence of such a body of constitutions.'—2 *Reeves* 55.

Fiar, opposed to *life-renter.* The person in whom the property of an estate is vested, subject to the life-renter's estate.—*Scotch Law.*

Fiars prices, the value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar prices, or when no price has been stipulated.—*Ersk.* L. 1, tit. 4, s. 6.

Fiat (*let it be done*), a decree; a short order or warrant of some judge or public officer for making out and allowing certain processes; e.g., the fiat of the Attorney-General for a writ of error (see *Castro* v. *Murray, L. R.* 10 *Ex.* 213), or of the director of public prosecutions, under s. 3 of the Newspaper Libel and Registration Act, 1881, for the prosecution of any person connected with a newspaper for a libel published therein.

Fiat in Bankruptcy, the authority of the Lord Chancellor to a commissioner of bankrupts, which authorised him to proceed in the bankruptcy of a trader mentioned therein. It was abolished by 12 & 13 Vict. c. 106, and a petition for adjudication substituted.

Fiat jus, ruat justitia.—(Let law prevail, though justice fail.)

Fiat justitia ruat cœlum.—(Let right be done, though the heavens should fall.)

Fiaunt [fr. *fiat*, Lat.], warrant.

Fictio cedit veritati. Fictio juris non est ubi veritas.—(Fiction yields to truth. Where there is truth, fiction of law exists not.)

Fictio legis iniquè operatur alicui damnum vel injuriam. 3 Rep. 36.—(A legal fiction does not properly work loss or injury., i.e., *In fictione juris semper æquitas existit.*

Fiction. Fictions are 'those things that have no real essence in their own body, but are so accepted in law for especial purpose.' The fictions of the Roman law apparently had their origin in the edictal power, and were devised to provide for cases where there was no legislative provision.

The English law has always abounded in fictions. See, e.g., EJECTMENT, FINE, FRACTION OF A DAY, LATITAT, TROVER.

Fide-jussor, a surety, or one that obliges himself in the same contract with a principal, for the greater security of the creditor or stipulator.—*Civ. Law.*

Fidei-commissum, a testamentary disposition, by which a person who gives a thing to another imposes on him the obligation of transferring it to a third person. The obligation was not created by words of legal binding force (*civilia verba*), but by words of request (*precative*), such as '*fidei committo*,' '*peto*,' '*volo dari*,' and the like, which were the operative words (*verba utilia*). If the object of the fidei-commissum was the hæreditas, the whole or a part, it was called *fidei-commissaria hæreditas*, which is equivalent to a universal fidei-commissum; if it was a single thing, or a sum of money, it was called *fidei-commissum singulæ rei.* The obligation to transfer the former could only be imposed on the heirs; the obligation of transferring the latter might be imposed on a legatee. It appears that there were no legal means of enforcing the due discharge of the trust called fidei-commissum, till the time of Augustus, who gave the consuls jurisdiction in fidei-commissa. Fidei-commissa seem to have been introduced in order to evade the civil law, and to give the hæreditas, or a legacy, to a person who was either incapacitated from taking directly, or who could not take as much as the donor wished to give. Gaius, when observing that Peregrini could take fidei-commissa, observes, that 'this' (the object of evading the law) 'was probably the origin of fidei-commissa'; but by a senatusconsultum, made in the time of Hadrian, such fidei-commissa were claimed by the fiscus. Fidei-commissa were ultimately assimilated to legacies.—*Gaius*, ii. 247—289; *Ulp. Frag* tit. 25; *Sand. Just.*, 7th ed., 249—265.

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum. Co. Litt. 676.—(Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.)

Fidem mentiri, when a tenant does not keep that fealty which he has sworn to the lord.—*Leg. Hen. I.* c. 53.

Fides est obligatio conscientiæ alicujus ad

intentionem alterius. Bacon.—(A trust is an obligation of conscience of one to the will of another.)

Fiducia. If a man transferred his property to another, on condition that it should be restored to him, this contract was called *fiducia*, and the person to whom the property was so transferred was said *fiducium accipere.*—*Cic. Top.* 10. A man might transfer his property to another for the sake of greater security in time of danger, or for other sufficient reasons. —*Gaius*, ii. 60.

Fiduciary [fr. *fiduciarius*, Lat.], one who holds anything in trust.

Fief, a fee; a manor, a possession held by some tenant of a superior.

Fiefs were originally called *terræ jure beneficii concessæ*; and it was not till under Charles *le Gros* the term *fief* began to be in use.—*Du Cange.*

Fief d'haubert, the Norman phrase for knight-service.

Fierding courts, inferior ancient Gothic courts, so called because four were established within every superior district or hundred.

Fieri facias, usually abbreviated *fi. fa.* (*that you cause to be made*), a judicial writ of *execution*, the most commonly used that lies for him who has recovered any debt or damages in the Queen's Courts. It is a command to the sheriff, that of the goods and chattels of the party he cause to be made the sum recovered by the judgment, with interest, at 4*l.* per cent. from the time of entered-up judgment, to be rendered to the party who sued it out. If the sheriff return *nulla bona*, an *alias fi. fa.* may issue; and upon that being returned, a *pluries* or a *testatum fi. fa.* may be issued into another county. See EXECUTION, and consult *Atkinson on Sheriff.*

Fieri facias de bonis ecclesiasticis (*that you cause to be made of the ecclesiastical goods*), when a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese or to the archbishop (during the vacancy of the bishop's see), commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese, the sum therein mentioned.—2 *Chit. Arch. Prac.*, 14th ed., 1176; *R. S. C. Ord. XLIII.* r. 5, and *App. H.* form 5.

Fieri feci (*I have caused to be made*), a return made by a sheriff when he has executed a writ of execution.

Fifteenths, a tribute or imposition of money anciently laid generally upon cities, boroughs, etc., throughout the whole realm; it amounted to a fifteenth of that which each city or town was valued at, or of every man's personal estate.—*Cam. Brit.* 171.

Fight. See CHALLENGES TO FIGHT.

Fightwite, making a quarrel to the disturbance of the peace.—*Jacob.*

Figures, the numerical characters by which numbers are expressed or written, as the ten digits, which are usually called the Arabic or Indian figures, from their supposed origin. The 6 Geo. II. c. 14 allowed expressing numbers by figures in all writs, etc., pleadings, rules, orders, and indictments, etc., in courts of justice, as had been commonly used, notwithstanding the 4 Geo. II. c. 26.

Filacer, Filazer, or **Filizer** [fr. *filum*, Lat; *file filace*, Fr., a thread], an officer of the Superior Courts of Westminster, who filed original writs, etc., and issued processes thereon.—2 *Wm. IV.* c. 39, s. 4; 2 & 3 *Wm. IV.* c. 110, s. 2.

Fild-ale, or **Filk-ale** [fr. *fillen*, Sax., to fill, and *ale*], an ale-feast. A term applied to an extortionate practice of officers of the forest, and of bailiffs of hundreds, of compelling persons to contribute to the supplying them with drink, etc. Prohibited by the Carta de Foresta.—4 *Inst.* 307.

File [fr. *filacium*, Lat.], a thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keeping of, and ready reference to, the same: also *v. a.*, to deposit at an office.

Filiation [fr. *filius*, Lat.], the relation of a son to his father; correlative to paternity.

Filiatio non potest probari. Co. Litt. 126. —(Filiation cannot be proved.) But see 7 & 8 Vict. c. 101, and title AFFILIATION.

Filicetum [tr. *filix*, Lat., fern-brake], brackie land, land where ferns grow.—*Co. Litt.* 4.

Filiolus, a little son; a godson.—*Jacob.*

Filius in utero matris est pars viscerum matris. 7 Co. 8.—(A son in the mother's womb is part of the mother's vitals.)

Filius mulieratus, the eldest legitimate son of a woman who was illicitly connected with his father before marriage.

Filius populi, a son of the people, a natural child. See *Cowel, voce Mulier.*

Filum aquæ, medium, the thread or middle of the stream where a river parts two lordships; also the middle of any river or stream which divides counties, townships, parishes, manors, liberties, etc. Riparian owners, that is, owners of the bank of a river, possess the bed of a river '*usque ad medium filum*,' as far as the middle thread [of the stream].

Filum viæ, the thread or middle of a road.

Final decree or judgment, a conclusive

decision of the Court, as distinguished from interlocutory. See INTERLOCUTORY.

Final process, a writ of execution on a judgment or decree.

Finder, a searcher employed to discover goods imported or exported without paying custom.—*Jacob.*

Finder of goods acquires a special property in them, available against all the world, except the true owner; he is bound, however, before appropriating them to his own use, to take all the means in his power to discover the owner. If the property had not been designedly abandoned, and the finder knew who the owner was, or with due exertion could have discovered him, he is held guilty of larceny if he keep and appropriate the articles to his own use. See *R.* v. *Thurborn*, 1 *Den. C. C.* 328.

Fine, a sum of money, or mulct imposed upon an offender, also called a ransom. See PENALTY. As to the enforcement of such fines, see 22 & 23 Vict. c. 21.

A sum of money paid by a tenant at his entrance into his land; or for the renewal of a lease; and see FINES IN COPYHOLDS.

An assurance—*abolished* by the Fines and Recoveries Act, 3 & 4 Wm. IV. c. 74—by matter of record, founded on a supposed previously existing right. In every fine, which was the compromise of a fictitious suit, and resembled the *transactio* of the Romans, there was a suit supposed, in which the person who was to recover the thing was called the plaintiff, conusee, or recognisee, and the person who parted with the thing the deforceant, conusor, or recognisor. It was termed a fine for its worthiness, and the peace and quiet it brought with it—*finis fructus exitus et effectus legis.* There are five essential parts to the levying of a fine:—(1) The original writ of right, usually of covenant, issued out of the Common Pleas against the conusor; and the præcipe, which was a summary of the writ and upon which the fine was levied; (2) the royal license (*licentia concordandi*) for the levying of the fine, for which the Crown was paid a sum of money called king's silver, which was the post-fine, as distinguished from the præ-fine, which was due on the writ; (3) the conusance, or concord itself, which was the agreement expressing the terms of the assurance, and was indeed the conveyance; (4) the note of the fine, which was an abstract of the original contract or concord; (5) the foot of the fine, or the last part of it, which contained all the matter, the day, year, and place, and before what justices it had been levied. A fine was said to be engrossed when the chirographer made the indentures of the fine and delivered them to the party to whom the conusance was made. The chirograph, or indentures, was evidence of the fine.

A fine without proclamation was a fine at the Common Law, and a fine with proclamations (which was to be proclaimed openly in the Common Pleas once a term for four terms next after its engrossment) was a fine according to the statute 4 Hen. VII. c. 24, and of this sort were most fines. A fine was single when an estate was granted to the cognisee, and nothing rendered to the cognisor; or double, when there was a render back again either of the land itself or something out of it, for some new estate.

There are four sorts of fine:—(1) a fine *sur cognizance de droit come ceo, etc.*, which was the most common, and was an acknowledgment on record of a previous gift or feoffment.

(2) A fine *sur done grant et render* consisted of two parts, a grant and a render, and operated like a feoffment and re-enfeoffment. —*Salk.* 340.

(3) A fine *sur conuzance de droit tantum* gave or transferred only the right or estate which was in the conusor. It was generally used to pass a reversionary interest or to surrender a life estate.

(4) A fine *sur concessit*, which might have been either for years, for life, in tail, or in fee. It conveyed the estates of wives, and created terms, which were binding, by estoppel, on contingent or executory interests. See 1 *Touch.* c. ii., and 1 *Prest. Conv.* c. ii.

The chirograph of a fine is sufficient evidence of its acknowledgment. It will be proper to see that the fine agrees with the deed leading or declaring the uses, that the parcels are sufficient to comprise the property conveyed, that the proclamations are endorsed, and that the possession has gone according to the fine.

Fine adnullando levato de tenemento quod fuit de antiquo dominico, an abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord. —*Reg. Orig.* 15.

Fine arts. As to copyright in works of the fine arts see 25 & 26 Vict. c. 68, and COPYRIGHT.

Fine capiendo pro terris, etc., an obsolete writ which lay for a person who, upon conviction by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favour of a sum of money, etc.—*Reg. Orig.* 142.

Fine force, where a person is compelled to do that which he cannot help.—*O. N. B.* 63.

Fine non capiendo pro pulchre placi-

tando, an obsolete writ to inhibit officers of courts to take fines for fair pleading.

Fine pro redisseisinâ capiendo, an old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine.—*Reg. Orig.* 222.

Fines for alienation, one of the oppressions of the feudal system, abolished by 12 Car. II. c. 24.

Fines in copyholds. A fine which is preserved by 12 Car. II. c. 24, s. 6, is a sum of money payable by custom to the lord. There are three classes of fines :—(1) those due on the change of the lord; (2) those on the change of the tenant; and (3) those for a license to empower the tenant to do certain acts.

When the fine is due on the change of the lord, such change must be by the act of God, and not in consequence of any act of the party. It can therefore be only claimed on the death of the lord.

When it is due on the change of the tenant, it matters not whether that change is effected by the act of God, or by the tenant's own act. Whenever the tenancy is changed, a fine is payable.

Those fines which are due on licenses by the lord, to empower the tenant to do certain acts, as to demise, etc., are rare. There must be a special custom to support such fine, for, by general custom, fines are due only on admissions.

The admission fine is *primâ facie* uncertain and arbitrary, or rather arbitrable, unless a special custom fix it; it must, however, be reasonable, and not excessive, for *excessus in re quâlibet jure reprobatur communi*, and two years' improved value of the land, deducting quit rents, but not land-tax, is now the full extent which the Courts will allow the lord to take in the exercise of this arbitrary power, except on voluntary grants, for then it is altogether in the lord's option.

If the fine be certain, the tenant should come prepared to pay it, but the lord cannot refuse admittance because the fine is not tendered to him. When the fine is uncertain, the practice is to fix a reasonable day and place of payment.

Upon payment of a fine, the steward delivers a copy of the court-roll, which is the tenant's muniment of his title. See *Scriven on Copyholds*, and *Chitty's Statutes*, vol. i., tit. '*Copyhold.*'

Fines for endowment, anciently paid to the lord when a married woman was endowed; they were grounded on the feudal exactions.

Finire, to fine, or pay a fine upon composition and making satisfaction.—*Old Records.*

Finis unius diei est principium alterius. 2 Buls. 305.—(The end of one day is the beginning of another.) See FULLAGE.

Finitio, death.—*Blount.*

Firdfare, and **Firdwite**. See FERDWIT.

Firdiringa, a preparation to go into the army.—*Leg. Hen. I.*

Fire. No action for damages lies against any person in whose house, etc., a fire shall accidentally begin.—14 *Geo. III.* c. 78, s. 86.

The maintenance of fire engines in urban sanitary districts is provided for by the Public Health Act, 1875, s. 171, which incorporates ss. 30—33 of the Town Public Clauses Act, 1847, and in the Metropolis by the Fire Brigade Act, 1865. See FIRE BRIGADE.

If, after a contract for the sale or lease of a house, etc., the house, etc., be burnt down, the loss falls on the intending purchaser or tenant. See *Paine* v. *Mellor*, 6 *Ves.* 349; *Counter* v. *Macpherson*, 5 *Moore P. C.* 83. In a lease, both the covenant to pay rent, and the covenant to repair, must be complied with by the tenant notwithstanding the destruction of the demised premises by fire; —for which reason it is common to insert in each of these covenants an appropriate saving or exception. See also INSURANCE.

Fire-arms, this word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc. See GUN.

In consequence of the frequent occurrence of accidents from the bursting of insufficient barrels, the legislature has interfered to prevent persons from using or selling barrels not regularly proved in a public proof-house. The first Act for this purpose was passed in 1813; it was superseded by 55 Geo. III. c. 59, repealed by 18 & 19 Vict. c. 148, which imposed a fine of 20*l.* on any one using, in any of the progressive stages of its manufacture, any barrel not duly proved; on any delivering the same except through a proof-house; and on any receiving for the purpose of making guns, etc., any barrels which have not passed through a proof-house.—*McCull. Com. Dict.* See now 31 & 32 Vict. c. 113, repealing 18 & 19 Vict. c. 148.

Firebare, a beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy.—*Cowel.*

Firebote, fuel for necessary use, allowed to tenants out of the lands granted to them.

Fire Brigade (Metropolitan). See 28 & 29 Vict. c. 90, which entrusts to the Metropolitan Board of Works the duty of extinguishing fires in the metropolis, and with a view to the performance of that duty authorises them to provide and maintain an efficient force of firemen, etc. By s. 12 of the

Act, on the occasion of a fire the chief officer of the fire brigade may take any measures that appear expedient for the protection of life and property.

Fire Insurance. See INSURANCE.

Fire-ordeal. See ORDEAL.

Fire-plugs. As to the duty of urban authorities to provide fire-plugs, see 38 & 39 Vict. c. 55, s. 66, and 10 & 11 Vict. c. 34, s. 124. As to the like duty of undertakers of waterworks, see 10 & 11 Vict. c. 17, ss. 38—43. As to the metropolis, see 34 & 35 Vict. c. 113, s. 34.

Fire policy. See INSURANCE.

Fire and Sword, Letters of, anciently issued from the privy council of Scotland, addressed to the sheriff of the county, authorising him to call for the assistance of the county to dispossess a tenant unlawfully retaining possession.—*Bell's Scotch Law Dict.*

Fireworks. The making and selling of fireworks and squibs, or throwing them about in the street, was declared to be a common nuisance by 9 & 10 Wm. III. c. 7. See also Metropolis Police Act, 2 & 3 Vict. c. 47, s. 54, and 9 & 10 Vict. c. 25. By the 23 & 24 Vict. c. 139, 24 & 25 Vict. c. 130, and 25 & 26 Vict. c. 98, provisions were made for regulating the manufacture, sale, and use of fireworks, but these have now been repealed, and the law relating to this subject amended by the Explosives Act, 1875 (38 & 39 Vict. c. 17). See EXPLOSIVE SUBSTANCES.

Firkin, a measure containing nine gallons.

Firm, the name or names under which any house of trade is established. 'Partners who have entered into partnership with one another are' for the purposes of the Partnership Act (see PARTNERSHIP) 'called collectively a firm, and the name under which their business is carried on is called the "firm-name"' (Partnership Act, 1890, s. 3). Partners may sue or be sued in the name of their firm, but if suing must disclose their names on demand. See Order XLVIII., A of R. S. C. 1891, replacing Rules of 1883.

Firma, a tribute anciently paid towards the entertainment of the King of England for one night; also victuals, provisions, or rent.—*Cowel.*

Firma Alba. See ALBA FIRMA.

Firman, an Asiatic word denoting a decree or grant of privileges, or passport to a traveller.

Firmaratio, the right of a tenant to his lands and tenements.—*Cowel.*

Firmarius, a fructuary.—1 *Reeves*, 324.

Firmatio, the doe season.—*Cowel.* Also a supplying with food.—*Leg. Inæ.*, c. 34.

Firmaun, or **Phirmaund,** an order, mandate, an imperial decree, royal grant, or charter.—*Indian.*

Firme, a farm.—*Old Records.*

Firmura, liberty to scour and repair a mill-dam, and carry away the soil, etc.—*Blount.*

First fruits, an incident to the old feudal tenures, being one year's profits of the land after the death of a tenant, which belonged to the king. Hence arose the claim of the head of the church to the first year's profits of every clergyman's benefice; otherwise called *annates* or *primitiæ*, transferred from the Pope to the Crown by 26 Hen. VIII., c. 3, and from the Crown to the Church for the augmentation of poor livings, by 2 & 3 Anne c. 11. As to allowance of four years to archbishops and bishops for payment of first fruits, see 6 Anne c. 54, s. 5, and as to composition by other spiritual persons, see 1 Eliz. c. 4, s. 6, and 6 Anne c. 54, s. 6. The holders of benefices of a value not exceeding 50*l.* a year are freed from first fruits and tenths by 6 Anne c. 24, and 6 Anne c. 54, and so are the holders of prebends and certain other dignities by 4 & 5 Vict. c. 39, s. 4, in consideration of their endowments being vested in the Ecclesiastical Commissioners. See BOUNTY OF QUEEN ANNE, and TENTHS.

First Impression. See PRIMÆ IMPRESSIONIS.

Fisc, or **Fiscus** [fr. *fiscus*, Lat., a great basket], the treasury of a prince or state.

Fiscal, belonging to the exchequer or revenue.

Fiscus is a wicker basket, or pannier, in which the Romans were accustomed to keep and carry about large sums of money (*Cic.* 1 Verr. c. viii.; *Phaedr. Fab.* ii. 7), hence any treasure or money chest.

The importance of the imperial fiscus led to the appropriating the name to that property which the Cæsar claimed as Cæsar, and 'fiscus,' without any adjunct, was so used (*Juv. Sat.* iv. 54). Ultimately the word came to signify, generally, the property of the state, the Cæsar having concentrated in himself all the sovereign power; thus the word had finally the signification of *ærarium* in the republican period. It does not appear at what time the *ærarium* was merged in the *fiscus*, though the distinction continued to the time of Hadrian. In the latter periods the words were used indiscriminately, to mean the imperial, which was the only public, chest.—*Smith's Dict. Antiq.*

Fishery, the right to take fish. Fisheries are either free, common, or several. A *free* fishery is the exclusive right of fishing in a

public river, and is a royal franchise. Common of fishery, or common of piscary, is the right of fishing in another man's water. A several fishery is the exclusive right of fishing. See *Paterson's Fishery Laws.*

The term is also applied to fishing grounds, or parts of the sea where at certain seasons numbers of fish are taken. The right of frequenting these has frequently been the subject of dispute between nations, and sometimes of treaties. For collection of statutes relating to fisheries, see *Chitty's Statutes*, vol. ii., tit. '*Fish.*' As to oyster fisheries see 31 & 32 Vict. c. 45, s. 27, *et seq.*, and 38 Vict. c. 15, s. 1. As to salmon fisheries, see 24 & 25 Vict. c. 97, and c. 109; 25 & 26 Vict. c. 97; 26 & 27 Vict. cc. 50 and 114; 27 & 28 Vict. c. 118; and 28 & 29 Vict. c. 121; and particularly 36 & 37 Vict. c. 71. By 36 & 37 Vict. c. 13, the office of Special Commissioners of Salmon Fisheries in England is discontinued. A close season for all freshwater fish is prescribed by the Freshwater Fisheries Act, 1878, 41 & 42 Vict. c. 39. As to exportation of salmon at certain times, see 26 & 27 Vict. c. 10. As to cutting through or destroying the dam, floodgate, or sluice of, or putting lime or noxious materials in, a fishpond or water which is private property, or in which there is a private right of fishery, with intent to take or destroy fish, see 24 & 25 Vict. c. 97, s. 32. As to the unlawful taking or destroying of fish, see 24 & 25 Vict. c. 96, ss. 24 and 25. As to Sea Fisheries generally, see Sea Fisheries Act, 1868, 31 & 32 Vict. c. 45; as to the seal fishery off the coast of Greenland, see 38 & 39 Vict. c. 18; and as to oysters, crabs, and lobsters, see 40 & 41 Vict. c. 24.

Fishgarth, a dam or wear in a river for taking fish.—*Cowel.*

Fish-royal. Whale and sturgeon, the taking of which is the exclusive right of the sovereign.—2 *Bl. Com.* 403.

Fisk, the right of the Crown to the movable estate of a person pronounced rebel.—*Bell's Scotch Law Dict.*

Fitung, strife.

Fitz [Nor., fr. *fils*, Fr.], a son. It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

Fitzherbert, the most distinguished writer upon law in the reign of Henry VIII. He was first a sergeant, and some years after a judge of the Common Pleas. The first book published by this learned author was his *Grand Abridgment*, printed in 1514 by Richard Pynson, of which in 1516 a second edition was printed by Wynkyn de Worde. In 1534 he published his new *Natura Brevium*, which was reprinted in 1537. In 1541 we find *The New Booke of Justyces of Peace made by Anthony Fitzherbert, Judge, lately translated out of Frenche into Englishe.* Of these, the *Natura Brevium* (nature of writs), which is an improvement of a more ancient work of the same nature and title, is by far the best known and most often cited. It is remarkable that this treatise on the nature and effect of the principal writs in the Register was published at a time when those writs were, many of them, going into disuse, and soon afterwards became obsolete.

Five-mile Act, 35 Eliz. c. 2, whereby popish recusants, convicted for not going to church, were compelled to repair to their usual place of abode, and not to remove above five miles from thence, repealed by 7 & 8 Vict. c. 102.

Fixtures, things of an accessory character, annexed to houses or lands, which become, immediately on annexation, part of the realty itself, i.e., governed by the same law which applies to the land, in conformity with the maxim *quicquid plantatur solo, solo cedit.* The application of this legal principle, however, is not uniform, as may be thus shown:—

(1) Between landlord and tenant. If the chattels be not let into the soil they are not fixtures at all, and may be removed at will, like any other species of personal property. When the chattel is connected with the freehold, by being let into the earth, or by being cemented or otherwise united to some erection attached to the ground, the question arises—when may the tenant remove such fixtures?

The general rule as to annexations made by a tenant during the continuance of his term is the following:—Whenever he has affixed anything to the demised premises during the term he can never again sever it without his landlord's consent; the property, by being annexed to the land, immediately belongs to the freeholder, and a tenant, by making it a part of the freehold, is considered to have abandoned all future right to it, so that it would be waste in him to remove it afterwards; it therefore falls in with his term, and comes to the reversioner as part of the land. But a tenant may so construct the erections that they shall not be deemed fixtures; thus, if he erect even buildings—as barns, granaries, sheds, and mills—upon blocks, rollers, pattens, pillars, or plates, resting on brickwork, they may be removed; for unless they be affixed to the freehold by being let into it, or are, by means of rails, mortar, or the like, united to it, they remain merely movable chattels.

The exceptions to the above rules are three:

(α) In favour of trade. A tenant may remove such things which he has fixed to the freehold for purposes of trade or manufacture, if the removal causes no material injury to the estate: furnaces, coppers, brewing-vessels, fixed vats, salt pans, and the like; machinery in breweries, collieries, and mills, such as steam-engines, cider mills, etc.; buildings for trade, as a varnish-house, built on plates laid on brickwork, and a shed called a Dutch barn, formed of uprights rising from a foundation of brick. (β) For agricultural purposes. The Agricultural Holdings Act, 1883, 46 & 47 Vict. c. 61, s. 34, gives a tenant a property in any engine, machinery, fencing, or building for which he cannot get compensation, affixed after January 1st, 1884, so that it is removable by the tenant before, or within a reasonable time after the termination of the tenancy, subject, however, to the tenant paying any rent due, etc., avoiding or making good damage, giving the landlord notice before removal, and allowing the landlord an option of purchase. The Agricultural Holdings Act, 1875, s. 53, and the Emblements Act, 1851, 14 & 15 Vict. c. 25, s. 3, contained very similar enactments, but the Act of 1851 applied only where the fixtures were put up with the written consent of the landlord, and the Act of 1875 made express provision for its exclusion by landlords, and was in the great majority of cases excluded by them. (γ) For ornament and convenience. The following are removable: Hangings, tapestry, and pier-glasses, whether nailed to the walls or panels or put up in lieu of panels; marble or other ornamental chimney-pieces; marble slabs, window blinds; wainscot fixed to the walls by screws; grates, ranges, and stoves, although fixed in brickwork; iron backs to chimneys; beds fastened to the walls or ceiling; fixed tables, furnaces, and coppers, mash-tubs, and fixed water-tubs; coffee and malt-mills; cupboards fixed with holdfasts; clock cases, iron ovens, and the like; provided the separation occasion but little or no damage. The fixtures must be moved before the tenant's term or interest expires, unless in the case of a strict tenancy at will, when the tenant may be allowed a reasonable time after his tenancy, if his interest were not terminated by his own act.—*Woodf. Land. and Ten.*, 14th ed., ch. xvi., s. 8.

(2) Between the heir and the personal representative of the terre-tenant. Though the fixtures will generally pass with the freehold to the heir, yet such of them as are put up for ornament, domestic use, or trade, devolve to the personal representative, provided they can be easily removed, and are not essential to the enjoyment of the inheritance.

(3) Between the tenant of a particular estate and the remainder-man or reversioner a similar rule applies as in the last case, though the right is more favourably construed.

The larceny of fixtures is specially punishable by the Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 74.

See *Amos* and *Ferard on Fixtures*, 3rd ed.

Flaco, a place covered with standing water.

Flagrant necessity, a case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

Flagrante delicto, in (*in the very act of committing the crime*).

Flecta, a feathered or fleet arrow.—*Cowel.*

Fledwite, or **Flightwite** [fr. *flyth*, Sax., flight, and *wite*, punishment], a discharge from amerciaments, where a person having been a fugitive came to the peace of our lord the king, of his own accord, or with license.

Fleet [fr. *fleot*, Sax., an estuary], a place where the tide flows, a creek, or inlet of water, hence Northfleet, Purfleet; also a company of ships or navy; also a prison in London (so called from a river or ditch formerly in its vicinity), now abolished by 5 & 6 Vict. c. 22.

Fleet-books. The books of the old Fleet prison are not, it is said, admissible in evidence to prove a marriage, for they are not made under public authority. But perhaps on a question of pedigree, they are evidence to show the name by which a woman passed when she was married there. These books are now deposited in the office of the Registrar-General, pursuant to the Act of 3 & 4 Vict. c. 92, ss. 6, 20. They contain the original entries of marriages solemnized in the Fleet prison from 1686 to 1754.—*Taylor on Evid.* s. 1430.

Flem [fr. *flean*, Sax., to kill], an outlaw.

Flemene frit, Flemenes frinthe, Flymena frynthe, the reception or relief of a fugitive or outlaw.—*Jacob.*

Flemeswite, the possession of the goods of fugitives.—*Fleta*, lib. 1, cxlvii.

Flet, house; home.—*Cowel.*

Fleta, *seu Commentariis Jurus Anglicani*, a treatise upon the whole law, as it stood at the time this author wrote, which serves as an appendix, and often as a commentary, to Bracton. The author was wholly an imitator.

The book was written after the thirteenth year of Edward I., and not much later. The occasion of the title of it is given by the author himself, who says it was written during his confinement in the Fleet prison. From that circumstance it has been conjec-

tured that he might be one of those lawyers who, for malpractice in their office as judges, were punished with imprisonment and pecuniary penalties.—2 *Reeves*, p. 279.

Fletwit, or **Flitwit**. See FLEDWITE.

Flichwite, a fine on account of brawls and quarrels.—*Spelm.*

Flit, treason.

Floating capital. Capital retained for the purpose of meeting current expenditure.

Floor of the court. The part of the court between the judges and the first row of counsel. Parties who appear in person stand there.

Florin, a coin of the value of two shillings.

Flotages, such things as by accident swim on the top of great rivers.—*Cowel.*

Flotsam, or **Floatsam**, goods floating upon the sea, which belong to the Crown unless claimed by the true owners thereof within a year and a day.—5 *Co. Rep.* 106 b.; 16 & 17 *Vict.* c. 107, s. 76; *and* 17 & 18 *Vict.* c. 104, ss. 499, 500. See JETSAM.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est.—(Rivers and ports are public, therefore the right of fishing is common to all.)

Fly for it. On a criminal trial in former times it was usual after verdict, even of not guilty, to inquire also: 'Did he fly for it?' Forfeiture of goods followed a conviction upon such inquiry. This practice, after having been long discontinued, was formally abolished by 7 & 8 Geo. IV. c. 28, s. 5.

Flyma, a runaway; fugitive; one escaped from justice, or who has no 'hlaford.'—*Anc. Inst. Eng.*

Flyman-frymth, the offence of harbouring a fugitive, the penalty attached to which was one of the rights of the Crown.—*Anc. Inst. Eng.*

F. N. B., *Fitzherbert's Natura Brevium.* See FITZHERBERT.

F. O. B., free on board, a term frequently inserted in contracts for the sale of goods to be conveyed by ship, meaning that the cost of shipping will be paid by the buyer. When goods are so sold in London the buyer is considered as the shipper, and the goods when shipped are at his risk. See *Green* v. *Sichel*, 29 *L. J. (C. P.)* 213.

Focage, housebote, firebote.—*Cowel.*

Focale, firewood.—*Cowel.*

Fodder, food for horses or cattle; (2) among the Feudists a prerogative of the prince to be provided with corn, etc., for his horses, by his subjects in his wars.

Fodertorium, provisions to be paid by custom to the royal purveyors.—*Cowel.*

Fœdus, a league or compact.

Fœmina viro co-operta (*a married woman*). *Fœminæ non sunt capaces de publicis officiis.* Jenk. Cent. 237.—(Women are not admissible to public offices.) But see WOMAN.

Fœneration, the act of putting out money to usury.

Fœnus nauticum (*nautical usury*), a contract for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest.

Fœsa, grass; herbage.—*Mon. Angl.* tom. 2, p. 506.

Fœticide, criminal abortion. See ABORTION.

Fœtus, a babe in the womb.

Fogage, fog or rank after-grass, not eaten in summer.—*Cowel.*

Foiterers, vagabonds.—*Blount.*

Folc-land, the land of the folk or people. It was the property of the community. It might be occupied in common or possessed in severalty: and in the latter case, it was probably parcelled out to individuals in the *folc-gemot* or court of the district; and the grant sanctioned by the freemen there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. Spelman describes folc-land as *terra popularis quæ jure communi possidetur—sine scripto* (Gloss. *voce* Folcland). In another place he distinguishes it accurately from bocland: *Prædia Saxones duplici titulo possidebant: vel scripti auctoritate, quod* bocland *vocabant, vel populi testimonio, quod.* folcland *dixere* (Ib., *voce* Bocland).

Folc-land was subject to many burthens and exactions from which bocland was exempt. The possessors of folc-land were bound to assist in the reparation of royal vills and other public works. They were liable to have travellers and others quartered on them. They were required to give hospitality to kings and great men in their progresses through the country, to furnish carriages and horses to them and to their messengers and servants, and those who had charge of their hawks, horses, and hounds. From these burthens the lands were liberated when converted by charter into bocland. See *Allen's Inquiry into the Rise and Progress of the Royal Prerogative in England*, 143—149.

Folc-mote, or **Folk-mote** [fr. *folk*, Sax., people, and *mote*, meeting], a general assembly of the people to consider of and order matters concerning the commonwealth; also any kind of popular or public meeting.—*Somner*; *Spelm.*; *Brady's Glos.* 48; *Termes de la Ley.*

Folc-right, or **Folk-right**, the *jus commune*,

or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees.

Foldage, and **Foldcourse**. See FALDAGE.

Folgarii, menial servants, followers.—*Bracton.*

Folgere, a freeman, who has no house or dwelling of his own, but is the follower or retainer of another (*heorthfæst*), for whom he performs certain predial services.—*Anc. Inst. Eng.*

Folgoth, official dignity.

Folio (abbrev. *fol.*), a certain number of words; in conveyances, etc., amounting to seventy-two, and in parliamentary proceedings to ninety. (2) In printing, the figure at the top or bottom of a page. (3) The largest size of a book.

Folkland. See FOLCLAND.

Food. See ADULTERATION.

Foot of a fine, the conclusion of it, including the whole matter, and reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

Foot-geld, amerciament for not expeditating or cutting out the balls of dogs' feet in the forest.—*Manw.*, p. i., p. 86.

Forage, hay and straw for horses, particularly in the army.—*Jacob.*

Foragium, straw when the corn is thrashed out.—*Cowel.*

Forbalka, a balk or ridge of land lying forward or next to the highway.—*Old Records.*

Forbannitus, a pirate.—*Leg. Ripuar.*

Forbarre, to deprive one of a thing for ever.—*Cowel.*

Forbatudus, the aggressor slain in combat.—*Jacob.*

Forbes Mackenzie Act, 16 & 17 Vict. c. 67, for the better regulation of public-houses in Scotland, of which the best known provision is that for entirely closing them on Sunday, amending 9 Geo. IV. c. 58, and amended by 25 & 26 Vict. c. 35.

Force and arms [*vi et armis*, Lat.], words usually inserted in an indictment, though not absolutely necessary.—14 & 15 *Vict.* c. 100, s. 24. They were also formally inserted in every declaration for trespass, in order to give the Court of Common Pleas or Exchequer jurisdiction, but were rendered unnecessary by the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76, s. 49.

Forcible Detainer, refusing to restore another's goods, after sufficient amends tendered, the original taking having been lawful; for which injury the remedy usually resorted to was trover, *q.v.* But if the original taking were unlawful it is a criminal offence against the public peace, and a misdemeanour, punishable by imprisonment and ransom at the pleasure of the Crown.—4 *Bl. Com.* 148.

Forcible entry, a taking possession with a strong hand and with violence, which is both a civil and a criminal injury. The civil injury is remedied by immediate restitution of the ejected possessor (*not* by action for damages; see *Beddall* v. *Maitland*, 17 *Ch. D.* 174); the criminal injury, being a breach of the peace, is punished by a fine.—See 5 Rich. II. st. 1, c. 7; 15 Rich. II. c. 2; 8 Hen. VI. c. 9; and 3 *Steph. Com.*

Forda, a ford or shallow in a river.—*Cowel.*

Fordol [fr. *fore*, Sax., before, and *dæle*, a portion], a butt or headland jutting out upon other land.—*Cowel.*

Forecheapum, præ-emption, forestalling the market.—*Jacob.*

Foreclosure. A mortgagee, or any person claiming an interest in the mortgage under him, can compel the mortgagor, after breach of the condition, to elect either to redeem the pledge or that his equity of redemption be extinguished.

The Conveyancing and Law of Property Act, 1881, 44 & 55 Vict. c. 41, s. 25, repealing and replacing 15 & 16 Vict. c. 86, s. 48, empowers either mortgagor or mortgagee to obtain an order for sale instead of redemption.

The utmost indulgence is extended to the mortgagor in enabling him to pay, so as to prevent an absolute foreclosure; the time fixed has been extended four times, although the third was expressed to be peremptory, there being a fair prospect that the mortgagor would be able to obtain the money. Some ground must be assigned for enlarging the time, and it is done only on the terms of paying the interest and costs already certified.

As to the jurisdiction of the County Courts in suits for foreclosure, see 28 & 29 Vict. c. 99, s. 1; and 51 & 52 Vict. c. 43, s. 87.

To obtain a foreclosure an action must be brought in the Chancery Division of the High Court (Jud. Act, 1873, s. 34). Consult *Coote* or *Fisher on Mortgages.*

Foregift, a premium for a lease, frequently forbidden to be taken for an ecclesiastical lease; see, e.g., 5 & 6 Vict. c. 108, s. 30.

Foregoers, royal purveyors.—26 *Edw. III.* c. 5.

Fore-hand Rent, rent payable in advance.

Foreign attachment, a custom which prevails in the city of London, whereby a debt owing to a defendant, sued in the Court of the Mayor or Sheriff, may be attached in the hands of the debtor. The custom was

certified by the Recorder of London, in the reign of Edward IV., to be, that if a plaint be affirmed in London before, etc., against any person, and it be returned *nihil*, if the plaintiff will surmise that another person within the city is a debtor to the defendant in any sum, he shall have garnishment against him to warn him to come in and answer whether he be indebted in the manner alleged; and if he comes and does not deny the debt, it shall be attached in his hands, and after four defaults recorded on the part of the defendant, such person shall find new surety to the plaintiff for the said debt, and judgment shall be that the plaintiff shall have judgment against him, and that he shall be quit against the o her after execution sued out by the plaintiff. Consult *Brandon on Foreign Attachment*, and see *Cox* v. *Lord Mayor of London*, *L. R.*, 2 *H. L.* 239; *Mayor of London* v. *London Joint Stock Bank*, 6 *App. Cas.* 393, which exempts corporations from the process, and decides that *fictitious summonses* render it invalid.

Foreign Bill of Exchange, a bill which is not an inland bill. See INLAND BILL. Before 19 & 20 Vict. c. 97, a bill drawn in one part of the United Kingdom, as England, on a person in another part, as Ireland or Scotland, was deemed a foreign bill; but this was altered by s. 7 of that Act, of which the effect is reproduced by s. 4 of the Bills of Exchange Act, 1882. By the law of merchants, the holder of a foreign bill is obliged to protest it for non-payment, and also for non-acceptance, whenever notice of such non-acceptance is necessary. As to stamp duty on foreign bills drawn, negotiated, or presented for payment in the United Kingdom, see 33 & 34 Vict. c. 97, s. 51. See *Chitty*, *Byles*, *Bayley*, or *Chalmers on Bills*.

Foreign bought and sold, a custom in London, which, being found prejudicial to sellers of cattle in Smithfield, was abolished.

Foreign Courts. The proceedings of a foreign Court are proved by copies under the seal of such Court, proof being given that the seal affixed is the seal of such Court. If a Court have no seal, then proof by an exemplification under the hand of the chief judge of the Court (his handwriting being proved) will be received. See *Pigott on Foreign Judgments*.

Foreign Enlistment Act, 59 Geo. III. c. 69, as to which see *Burton* v. *Pinkerton*, *L. R.*, 2 *Ex.* 340, and the proclamation gazetted May 14, 1860, as to the non-interference of British subjects in the war between the States of America, repealed and replaced by 'The Foreign Enlistment Act, 1870' (33 & 34 Vict. c. 90), passed 'to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace.' By it provision is made, *inter alia*, for the prevention of illegal enlistments, illegal shipbuilding, and illegal expeditions, etc.

Foreign Judgments. See FOREIGN COURTS.

Foreign Jurisdiction Acts. 6 & 7 Vict. c. 94; 28 & 29 Vict. c. 116; 29 & 30 Vict. c. 87; 38 & 39 Vict. c. 85; and 41 & 42 Vict. c. 67; consolidated by the Foreign Jurisdiction Act 1890, 53 & 54 Vict. c. 37, which regulates the exercise by the Crown of the powers and jurisdiction acquired by it (whether by treaty, grant, usage, sufferance, or otherwise), in countries out of the dominions of the British Crown.

Foeign law is a question of fact. See LAW, QUESTIONS OF, and SKILLED WITNESS. By 24 Vict. c. 11, the High Court of Justice may remit a case with queries to foreign Courts of the countries with which a convention shall have been entered into for the purpose by the British Crown for ascertainment of the foreign law, and may apply the opinion obtained to the facts of the case. But no convention having been in fact entered into (see *Chitty's Statutes*, vol. ii., p. 827, and note), this Act is as yet inoperative.

Foreign Marriage Acts, the Consular Marriage Acts of 1849 and 1868, the Marriage Act, 1890, and the Foreign Marriage Act, 1891, for the regulation of the marriage abroad of parties of whom one is a British subject, by or before a consul or other accredited officer.

Foreign Office, the department of State through which the Sovereign communicates with foreign powers; a Secretary of State is at its head. Till the middle of the last century the functions of a Secretary of State as to foreign and home questions were not disunited.

Foreign plea, a plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit.—*Cowel.*

Foreign seamen. As to apprehension of, for desertion, see 15 & 16 Vict. c. 26.

Forejudger [fr. *forisjudicatio*, Lat.], a judgment whereby a person is deprived of the thing in question. To be forejudged the Court is when an officer or attorney of any Court is expelled the same for some offence, or for not appearing to an action.

Foreman, the presiding member of a jury.

Forensic, belonging to courts of justice.

Forensic medicine, the science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice.

It comprehends, in a more extensive sense, *medical police*, or those medical precepts which may prove useful to the legislature or the magistracy. This science is also termed *medical jurisprudence*, *legal medicine*, and *state medicine*. Consult the works of Taylor, Guy, Beck, or Tidy on the subject.

Foreschoke [*derelictum*, Lat.], forsaken; disavowed.—10 *Edw. II.* c. 1.

Forest [fr. *foresta*, Ital.], an incorporeal hereditament, being the right or franchise of keeping, for the purpose of venery and hunting, the wild beasts and fowls of forest, chase, park, and warren (which means all animals pursued in field sports), in a certain territory or precinct of woody ground and pasture set apart for the purpose, with laws and officers of its own, established for protection of the game.—*Manw. For. Laws.*

Tha *Charta de Forestâ*, confirmed in parliament, 9 Hen. III., disafforested many forests unlawfully made. Some of the royal forests still exist, as New Forest in Hampshire, Windsor, and Richmond. A forest is, in general, a royal possession, though it is capable of being vested in a subject. A forest is a right which the owner thereof (whether sovereign or subject) may have either in his own lands or the lands of another, differing from other incorporeal hereditaments, which are rights exercised over another's lands. The owner of a forest is also considered (notwithstanding the general rule that title cannot be made to things *feræ naturæ*) as having a qualified property in the wild animals of chase and venery there found, as long as they continue therein.—1 *Steph. Com.*

Forest Courts, fallen into absolute desuetude. They were instituted for the government of the royal forests in different parts of the kingdom, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the Courts of attachments, regard, *sweinmote*, and justice-seat. The Court of *attachments*, *woodmote*, or forty days' Court, was held before the verderors of the forest once in every forty days, to inquire into all offences against vert and venison. The Court of *reward*, or survey of dogs, held every third year, for the expeditation of mastiffs. The Court of *sweinmote*, held before the verderors thrice in every year, the sweins or freeholders within the forest composing the jury. It inquired into the oppressions and grievances committed by the officers of the forest, and tried presentments certified from the Court of attachments against offences in vert and venison. The Court of *justice-seat*, held before the chief itinerant judge, or his deputy, to hear and determine all trespasses within the forest, and claims of franchise, etc., therein arising. This was a Court of Record; but since the Revolution, in 1688, the forest laws have fallen into total disuse. —3 *Steph. Com.*

Forestage, duty or tribute payable to the king's foresters.—*Cowel.*

Forestalling the market, buying up merchandise on its way to market, or dissuading persons to bring their goods there, or persuading them to enhance the price when there. It was deemed an offence against public trade, but the statutes prohibiting it were repealed by 7 & 8 Vict. c. 24.—3 *Inst.* 196.

Forethought felony. See MURDER.

Forfang, or **Forfeng** [fr. *fore*, Sax., before, and *fangen*, to buy], the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign.—*Cowel.* Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of it; also the reward fixed for such rescue.

Forfeiture, a penalty for an offence or unlawful act, or for some wilful omission of a tenant of property, whereby he loses it, together with his title, which devolves upon others.

Forfeiture resulted from the following circumstances:—(1) Treason, misprision of treason, felony, murder, self-murder, *præmunire*, and striking or threatening a judge. But 33 & 34 Vict. c. 23, enacted that no conviction, etc., for treason or felony, or *felo de se*, shall cause any forfeiture except as consequent on outlawry. The Act also makes provision for the appointment by the Crown of administrators of the property of convicts.

(2) Conveyance contrary to law, as transferring a freehold to an alien, who formerly could take lands, but could not hold them; wherefore upon office found the Crown was entitled to the land. But 33 & 34 Vict. c. 14 (subject to certain provisoes), enables aliens to hold real and personal property. See ALIEN.

(3) Alienation in mortmain, or to any kind of corporation (which was supposed to hold property in a dead hand locked up from all change or transfer), was prohibited under pain of forfeiture to the lord. The Crown may, however, grant a license which will avoid this forfeiture.—3 & 4 *Vict.* c. 60; 6 & 7 *Vict.* c. 37, s. 12; and 51 & 52 *Vict.* c. 42, s. 2.

(4) Disclaimer, which is a tenant's denial of his landlord's title, by setting up a title either in himself or any other person. This

operates as a forfeiture of all interest in such tenant.

(5) Breaches of covenants or conditions contained in a lease or other instrument, when it is stipulated that they shall occasion forfeiture; a forfeiture, under these circumstances, may be waived by the person entitled to take advantage of it, by express declaration, or by any act inconsistent with it, or admitting a continuing tenancy, as by receiving rent accrued due since the breach, or distraining for the same, or by subsequently encouraging the tenant to make subsequent improvements; but he must have fully known of the act of forfeiture at the time of waiver, otherwise it will be no waiver.

Relief against forfeiture of the lease, where the breach was by non-payment of rent, was granted by Courts of Equity from very early times, and is now grantable by the High Court under the C. L. P. Act, 1860. Where the breach was by not insuring, relief was granted under 22 & 23 Vict. c. 35, and the C. L. P. Act, 1860, but only on the conditions that no loss had happened, that an insurance was on foot at the time of the application for the relief, and that the relief should not be granted again. Except as above, and except in rare cases of accident or surprise, no relief was grantable however trivial the breach might have been, and however great might be the improved value of the demised premises, until the Conveyancing, etc., Act, 1881, 44 & 45 Vict. c. 41 (which repeals the prior enactments as to relief against forfeiture for non-insurance, but leaves standing those as to forfeiture for non-payment of rent), by s. 14, conferred on the Chancery Division of the High Court a general power to relieve against forfeiture. By this section, before proceeding to enforce a forfeiture, the lessor must serve on the lessee a notice requiring the lessee to pay compensation for the breach, and also remedy it if it be capable of remedy. If the parties fail to come to terms, and the lessor seek to enforce the forfeiture, the lessee may apply to the Court, which may grant or refuse relief as it thinks fit. The section does not apply to a covenant against assigning, or to a condition for forfeiture upon bankruptcy, or in the case of a mining lease, to a covenant to allow the lessor to inspect books.

It is very material to observe that the section is (1) retrospective, and (2) incapable of being nullified by any stipulation of the parties.

(6) Waste. The Statute of Gloucester, 6 Edw. I. c. 5, seems to have this operation; but the better opinion is that the forfeiture was abolished along with the writ of waste by 3 & 4 Wm. IV. c. 27, s. 36, and at all events it is never insisted on.

(7) Breach of copyhold customs.

Besides the grounds of forfeiture mentioned above, there are two which obtain in reference to ecclesiastical property, viz.: (1) lapse; and (2) simony.

As to forfeitures on clandestine marriages, see 4 Geo. IV. c. 76, ss. 23—25; 6 & 7 Wm. IV. c. 85, s. 43; and 19 & 20 Vict. c. 119, s. 19.

Forfeiture of Marriage, an ancient writ which lay against him who, holding by knight's service, and being under age and unmarried, refused to marry the woman whom the lord offered him without disparagement, and married another.—*F. N. B.* 141; *Reg. Orig.* 163.

Forgabulum, or **Forgavel,** a quit-rent; a small reserved rent in money.—*Jacob.*

Forgery [fr. *forger*, Fr.; or *fingo*, Lat.], the *crimen falsi*, or the false making or alteration of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud. The forged instrument must be false in itself. The mere subscribing a note, given as the party's own, by a fictitious name, is not forgery.—*Reg.* v. *Martin*, 5 *Q. B. D.* 34.

Forgery at common law was a misdemeanour, but most forgeries have been by statute made felonious. Many of these statutes were consolidated by 11 Geo. IV. and 1 Wm. IV. c. 66, now repealed, and replaced by 24 & 25 Vict. c. 98, which applies to the forgery of transfers of stock, etc., and powers of attorney relating thereto, or attestation to such powers, of bank notes, bank bills, etc., of deeds, bonds, wills, bills of exchange or promissory notes, orders, or receipts, etc., for money or goods; of marriage licenses or certificates; of registers of births, marriages, deaths, or burials, and of many other documents. The statute also provides for the punishment of numerous offences which, though not amounting to forgery, facilitate, or are steps towards the commission of, that crime, or are of a somewhat similar nature, e.g., the false personation of owners of stock, etc., and so transferring stock or receiving dividends (s. 3); purchasing or receiving forged bank notes, bank bills, etc. (s. 13); making or having in possession moulds for making paper, or paper with certain marks thereon similar to those on the notes of the Banks of England or Ireland, or of other banks (ss. 14, 15, 18); drawing, making, accepting, endorsing, or signing bills, notes, and receipts, etc., without authority (s. 24); obliterating crossings on cheques (s. 25); demanding property on forged instruments (s. 38).

It is not necessary to set forth a copy or a *fac simile* of the forged instrument in the indictment, a description of it being sufficient. Nor to allege or prove an intent to defraud a particular person.—24 & 25 *Vict.* c. 98, ss. 42, 44. Capital punishment for forgery is abolished, and the punishment is penal servitude, varying from life to five years, or imprisonment for not more than two years. Consult 2 *Russell on Crimes.*

The Forged Transfers Act, 1891, 54 & 55 Vict. c. 43, enables, but does not oblige, companies and local authorities to make compensation, 'by a cash payment out of their funds, for any loss arising from a transfer "of their shares, stock, or securities," in pursuance of a forged transfer, or of a transfer under a forged power of attorney.'

Forinsecum manerium, that part of a manor which lies without the town, and is not included within the liberties of it.—*Paroch. Antiq.* 351.

Forinsecum servitium, the payment of extraordinary aid.—*Ken. Glos.*

Forinsecus, outlawed, or on the outside.

Forisbanitus, banished.—*Mat. Par.* 1245.

Forisfacere, i.e., *extra legem seu consuetudinem facere.* Co. Litt. 59.—(Forisfacere, i.e., to do something beyond law or custom.)

Forisfactura, forfeit.

Forisfamiliation. 'A son was said to be forisfamiliated' (says *Reeves*, i. 110), 'if his father assigned him part of his land and gave him seisin thereof . . . and the son expressed himself satisfied with such portion.'

Forler-land, land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained.—*But. Surv.* 56.

Form, the legal exterior of a document apart from the substance. Special demurrers, now abolished, were objections to the pleadings as bad in form.

Forma legalis, forma essentialis. 10 Co. 100.—(Legal form is essential form.)

Formâ non observatâ infertur adnullatio actûs. 12 Co. 7.—(Form not being observed a nullity of the act is inferred.)

Formâ pauperis, *suing in.* See IN FORMÂ PAUPERIS.

Formalities, robes worn by the magistrates of a city or corporation, etc., on solemn occasions.—*Encyc. Lond.*

Formedon, a writ in the nature of a writ of right, which was the remedy for a tenant-in-tail on a discontinuance. It was of three kinds: (1) in descender; (2) in remainder; (3) in reverter.—3 *Reeves*, 4. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Formella, a certain weight of above 70 lb., mentioned in 51 Henry III.—*Cowel.*

Formulary, a form, a precedent.

Fornagium [fr. *fournage*, Fr.], the fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*); or for a commission to use his own. —*Plac. Parl.* 18 *Edw. I.*

Fornication [fr. *fornix*, a brothel, Lat.], the intercourse of a man with a prostitute; the act of incontinency in single persons; if either party be married it is adultery. During the Commonwealth, a second offence was made felony without benefit of clergy.—*Scob.* 121. After the Restoration the offence was left to be dealt with by the spiritual court according to the rules of the canon law. Proceedings under the canon law for incontinency have fallen into desuetude.—4 *Steph. Com.* See PROSTITUTE.

Forprise, an exception, or reservation; also an exaction; or taking beforehand.—*Cowel.*

Forschel, a strip of land lying next to the highway.

Forschoke, forsaken. See FORESCHOKE.

Forses [*catatudæ*, Lat.], waterfalls.—*Cam. Brit.*

Forspeaker, an attorney or advocate in a cause.—*Blount.*

For-speca, For-spreca, prolocutor, paranymphus.—*Anc. Inst. Eng.*

Forestellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus. 3 Inst. 196.—(A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.) See FORESTALLING THE MARKET.

Fortalice, a fortress or place of strength, which anciently did not pass without a special grant.—11 *Hen. VII.* c. 18.

Forthcoming, *action of,* a process for effectuating the arrestment (attachment) of debts due to one's debtor.—*Scotch Law*; see 39 & 40 Vict. c. 70, s. 47.

Forthwith, when a defendant is ordered to plead *forthwith* he must plead within twenty-four hours. When a statute enacts that an act is to be done 'forthwith,' it means that the act is to be done within a reasonable time. —2 *Chit. Arch. Prac.*, 14th ed., 1435.

Fortia, power, dominion, or jurisdiction.—*Leg. Hen. I.* c. 29.

Fortifications. Acts for defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards, and the ports of Dover and Portland, and of erecting a central arsenal.—23 & 24 *Vict.* c. 109, and 25 & 26 *Vict.* c. 78. See also 23 & 24 Vict. c. 112, 'An Act to make better provision for acquiring lands for the defences of the realm.' See also 26 & 27 Vict. c. 80; 27 & 28 Vict. cc. 89, 109; 28 & 29 Vict. c. 61, amended by 30 & 31 Vict. cc. 24,

145; 32 & 33 Vict. c. 76. See DEFENCE ACTS.

Fortility, a fortified place; a castle; a bulwark.—*Cowel*; 11 *Hen. VII.* c. 18.

Fortior est custodia legis quam hominis. 2 Rol. Rep. 325.—(The custody of the law is stronger than that of man.)

Fortior et æquior est dispositio legis quam hominis. Co. Litt. 234.—(The disposition of the law is stronger and more just than that of man.)

Fortlett, a place or fort of some strength; a little fort.—*O. N. B.* 45.

Fortuna, treasure-trove.—*Jacob.*

Fortune-tellers, persons pretending or professing to tell fortunes are punishable as rogues and vagabonds under 5 Geo. IV. c. 83, s. 4. See further GYPSIES and VAGRANT.

Fortunium, a tournament or fighting with spears; and an appeal to fortune therein.—*Mat. Par.* 1241.

Forty-days' Court, the court of attachment in forests, or wood-mote court. See FOREST.

Forum, a court; the Court to the jurisdiction of which a party is liable. *Forum competens,* a Court having jurisdiction over the suit; *forum incompetens,* a Court not having such jurisdiction.

Forum originis [Lat.], the Court of the country of a man's domicile by birth.

Forwarding Merchant, one who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or waggons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent.—*Story's Bailments,* 509.

Fossa, a ditch full of water wherein women committing felony were drowned; also a grave. See FURCA.

Fossagium, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

Fossway [fr. *fossus,* Lat., digged], one of the four ancient Roman ways through England. Trevisa describes it thus: 'The first and gretest of the foure weyes is called *fosse,* and stretches oute of the southe into the north, and begynneth from the corner of Cornewaille, and passeth forth by Devenshyre, by Somersete, and forth besides Tetbury, upon Cotteswold, beside Coventre, unto Leycester, and so forth, by wylde pleynes towards Newerke, and endeth at Lincoln.'—*Polychron,* l. 1, c. xiv.

Fosterland, lands alloted for the maintenance of a person.—*Cowel.*

Fosterlean, the remuneration fixed for the rearing of a foster-child; also the jointure of a wife.—*Jacob.*

Foujdar, Fojedar, Phousdar, Fogedar, under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver-general of the revenues.—*Indian.*

Foujdarry-court, a tribunal for administering criminal law.—*Indian.*

Foundation, the founding or building of a college or hospital. The incorporation of a college or hospital is the foundation; and he who endows it with land or other property is the founder.

Foundling-hospitals, charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The Foundling Hospital Act is the 13 Geo. II. c. 29.

Fourcher, to put off, or delay an action.—*Termes de la Ley.*

Fourching, the act of delaying legal proceedings.—*Termes de la Ley.*

Four-corners, of an instrument; that which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made), is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.

Four Seas. These are (1) The Atlantic, which comprises the Irish Sea and St. George's Channel; (2) The North Sea; (3) The German Ocean; and (4) The English Channel. See *Woolrych on Waters,* 2nd ed. p. 4. Before the reign of James the First, the four seas were understood with more restriction, the Scotch seas being excluded. The expression 'within the four seas,' '*intra quator maria*' means 'within the kingdom of England, and the dominions of the same kingdom.'—*Co. Litt.* 1078.

Fowls of warren. According to Coke they are the partridge, quail, rail, pheasant, woodcock, mallard, heron, etc. According to Manwood, they are the pheasant and partridge only.—*Co. Litt.* 233 *a*; *Manw.* 95.

Foxhunting upon the land of another is a trespass.—*Paul* v. *Summerhayes,* 4 *Q. B. D.* 9.

Fox's Act, 52 Geo. III. 3. c. 60, which secured to uries, upon the trial of ndictments or libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment. See LIBEL.

Foy [fr. *foi,* Fr.], faith; allegiance.

Fractionem diei non recipit lex. Lofft. 572.—(The law does not take notice of a portion of a day.) See next title.

Fraction of a day, the law does not recognise, except in cases of necessity, and for the purposes of justice (see *Clarke* v. *Bradlaugh*, 8 *Q. B. D.* 63); when, therefore, a thing is to be done upon one day, all that day is allowed to do it in. An Act of Parliament becomes law as soon as the day on which it is passed commences (*Tomlinson app. Bullock resp.*, 4 *Q. B. D.* 230), unless the commencement be expressly postponed; and every minor comes of age on the day preceding the twenty-first anniversary of his birthday, and may act as of full age the first moment of that day.

Fractitium, arable land.—*Mon. Angl.*

Fractura navium, wreck of shipping at sea.

Franchilanus, a freeman.—*Chart. Henry IV.*

Franchise, an incorporeal hereditament synonymous with liberty. A royal privilege or branch of the Crown's prerogative subsisting in the hands of a subject. It arises either from royal grants, or from prescription, which pre-supposes a grant. The kinds are almost infinite, but the principal are bodies-corporate, the right to hold courts-leet, fairs, markets, ferries, forests, chases, parks, warrens, fisheries. The remedy for disturbance is an action.—1 *Steph. Com.*

Also, the right of voting at an election for a member of parliament. See ELECTION.

Franchise Prisons, abolished by 21 & 22 Vict. c. 22.

Francigenæ, a name anciently applied to foreigners generally.—*Jacob.* See FRENCHMAN.

Frangenti fidem, fides frangatur eidem.—(Let faith be broken with him who breaketh faith.)

Frank. Members of parliament, peers, etc., formerly had the privilege of franking their letters by autograph. It was abolished upon the introduction of the penny postage by 3 & 4 Vict. c. 96.

Frank-almoigne, free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors for ever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, s. 7, and therefore still subsists in some few instances.—2 *Br. & Had. Com.* 203.

Frank-bank. See FREE-BENCH.

Frank-chase, a liberty of free chase.

Frank-fee, freehold lands exempted from all services, but not from homage.

Frank-ferm, lands or tenements changed in the nature of the fee by feoffment, etc., out of knight service, for certain yearly acknowledgments.—*Britton*, c. lxiv.

Frank-fold. See FOLDAGE.

Frank-law, the benefit of the fee and common law of the land.—*Crompton Juris.* 156.

Franklin, a steward; a bailiff of land.

Frank-marriage [*in libero maritagio*, Lat.], a species of entailed estates, now grown out of use, but still capable of subsisting. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, i.e., in special tail. For the word *frank-marriage*, *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void until the fourth degree of consanguinity be past between the issues of the donor and donee, when they were capable by the law of the church of intermarrying.—*Litt.* s. 19.

Frank-pledge, a surety to the sovereign for the good behaviour of freemen. Living under frank-pledge has been termed living under law.—*Fleta*, i. 47. See LEET.

Frank-tenement [*liberum tenementum*, Lat.], a freehold estate.

Frassetum, a wood or wood-ground where ash-trees grow.—*Co. Litt.* 4 *b.*

Frater consanguineus, a brother by the father's side, opposed to *frater uterinus*, the brother by the mother's side.

Frater fratri uterino non succedet in hæreditate paternâ.—(A brother shall not succeed an uterine brother in the paternal inheritance.)

The maxim is now superseded; for by 3 & 4 Wm. IV. c. 106, s. 9, the half-blood inherit next after any relation in the same degree of the whole blood and his issue where the common ancestor is a male, and next after the common ancestor where a female, so that the brothers of the half-blood, on the part of the father, inherit next after the sisters of the whole blood on the part of the father and their issue, and the brothers of the half-blood on the part of the mother inherit next after the mother.

Frater nutricius, a bastard brother.

Frater uterinus, a brother by the mother's side, opposed to *frater consanguineus*.

Fraternia, a fraternity or brotherhood.

Fraternities, bodies corporate.

Fratres conjurati, sworn brothers, or com-

panions for the defence of their sovereign, or for other purposes.—*Hoved.* 445.

Fratres pyes, certain friars who wore white and black garments.—*Walsingham*, 124.

Fratriage, a younger brother's inheritance.

Fratricide, the killing of a brother or sister.

Fraud, deceit in defrauding or endeavouring to defraud another of his right, by artful device, contrary to the rule of honesty.

It is impossible to lay down a definition completely comprehending fraud, and no rule can, from the very nature of the subject, be invariable. Fraud is infinite; '*Crescit in orbe dolus*'; and were the Courts to prescribe the limits of their equitable relief against fraud, or to define the species of evidence receivable in support of it, their decrees would be continually eluded: to afford complete protection new principles must be created to meet new species of fraud.

Fraud, concealed. In the case of a designed fraud, whereby any person is, by concealment of material facts, prevented from asserting his title to *land or rent*, the limitation of time (12 years) within which he may sue in equity for the land or rent, runs from the time at which such fraud was or might with reasonable diligence have been first known or discovered. See *Vane* v. *Vane*, *L. R.* 8 *Ch.* 383; 3 & 4 Wm. IV. c. 27, s. 26.

Fraud, constructive, such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate fraud or injury upon others, yet, by their tendency to deceive or mislead, or to violate public or private confidence, or to injure the public interests, are equally reprehensible with positive fraud, and therefore equally prohibited.

Thus, to prevent injustice and shut out inducement to wrong, certain transactions are held to be fraudulent, as contrary to general policy, or to fixed legal principle; as marriage-brokerage bonds, and contracts in restraint of trade. Other transactions again, growing out of a special confidential or fiduciary relation between the parties, are watched with special jealousy, because they afford the means of taking advantage of or exercising undue influence over others; such are transactions between parent and child, attorney and client, principal and agent, or surety, guardian and ward, trustee and *cestui que trust*, partners, etc. Others are of a mixed character, combining the ingredients of the preceding with others of a peculiar nature; but they are chiefly prohibited because they operate as a fraud upon the private rights, interests, duties, or intentions of third parties; or compromise the private interests, rights, or duties of the parties themselves, such as secret composition deeds, voluntary conveyances, etc.—1 *St. Eq. Jur.* 213.

Frauds, Statute of, 29 Car. II. c. 3 (A.D. 1676). This famous statute is said to have been framed by Sir Matthew Hale, Lord-Keeper Guilford, and Sir Leoline Jenkins, an eminent civilian. Lord Nottingham used to say of it, that 'every line was worth a subsidy,' and it has been said that at all events the explanation of every line has cost a subsidy, no statute having been the subject of so much litigation. 'This statute,' remarks Mr. Chancellor Kent (2 *Com.* 494, n (*d*)), 'carries its influence though the whole body of American jurisprudence, and is in many respects the most comprehensive, salutary, and important legislative regulation on record affecting the security of private rights.

The main object of the statute was to take away the facilities for fraud and the temptation to perjury which arose in verbal obligations, the proof of which depended upon unwritten evidence. Its principal enactments are:—Parol conveyances, leases, etc., of land, unless put in writing and signed by the parties making the same, or their agents lawfully authorised by writing, have the effect of leases at will only, except in the case of a lease for not more than three years, reserving as a rent two-thirds of the annual value (ss. 1 & 2). Grants and surrenders must be by deed or writing signed by the party granting or surrendering, or his agents authorised by writing (s. 3).

'No action shall be brought to charge an executor or administrator upon any special promise to answer damages out of his own estate; or to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or (*sic*) sale of lands, or any interest in or concerning them; or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, is in writing and signed by the party to be charged, or some other person thereunto by him lawfully authorised' (s. 4). Declarations of trust of lands, and assignments of trusts, must be in writing (s. 9). Lands are liable to the judgment, etc., of *cestui que trust*, and held free from incumbrances of the trustees; and trusts in fee-simple are assets in the hands of the heirs of the *cestui que trust* (s. 11). Writs of execution bind the property of goods only from the time of their delivery to the sheriff (s. 16).

'No contract for the sale of any goods, wares, and merchandise for the price of 10*l.* or upwards shall be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by the contract, or their agents thereunto lawfully authorised' (s. 17).

Of the above sections the first three (materially altered by 8 & 9 Vict. c. 106, which requires a *deed* instead of a writing) and the 4th and 17th are of very great practical importance, and have been the subject of very numerous legal decisions, amongst the chief of which are *Birkmyr* v. *Darnell*, 1 *Sm. L. C.*; *Eastwood* v. *Kenyon*, 11 *A. & E.* 438; *Wright* v. *Stavert*, 29 *L. J. Q. B.* 161; *Hinde* v. *Whitehouse*, 7 *East*, 558; *Peter* v. *Compton*, 1 *Sm. L. C.*; *Allen* v. *Bennett*, 3 *Taunt.* 169; and *Sharman* v. *Brandt*, *L. R.*, 6 *Q. B.* 720.

The statute also contained important provisions as to the making, revocation, etc., of wills devising land, and as to nuncupative wills, etc., which have been repealed by the Wills Act, 1 Vict. c. 26.

The Mercantile Law Amendment Act, 1850, 19 & 20 Vict. c. 97, provided that persons acquiring titles to goods before they have been seized or attached under a writ against the seller shall be protected (s. 1); that the consideration for guarantees need not appear by writing (s. 3); and that guarantees to or for a firm shall cease upon a change in the firm, except in special cases (s. 4). Consult *Addison on Contracts.*

Fraudulent conveyances, Statutes against, 13 Eliz. c. 5 (A.D. 1570), made perpetual by 29 Eliz. c. 5, by which every conveyance of lands, goods, or of any rent, or other profit or charge, out of lands, etc., and every bond, suit, judgment, and execution made with the intent to defraud creditors or others of their actions, etc., is deemed (as against that person, his heirs, executors, administrators, and assigns, whose actions, etc., are disturbed, delayed, or defrauded) to be utterly void.

The 27 Eliz. c. 4, s. 2, made perpetual by 39 Eliz. c. 18, enacts that every conveyance of lands, made with the intent to defraud and deceive any person, bodies politic or corporate, who shall purchase the same, shall be deemed (as against that person, etc.) to be utterly void. But the act shall not be construed to defeat or make void any conveyance, etc., for good consideration and *bonâ fide.* See *Twyne's case*, 1 *Smith's L. C.* 1.

The deeds which are rendered void by these statutes are of two sorts:—(1) Deeds made with an express intent to defraud creditors or subsequent purchasers. (2) Deeds made upon good but not valuable considerations, usually called voluntary conveyances. See FRAUDULENT PREFERENCES.

Fraudulent debtors. Punishable by 32 & 33 Vict. c. 62, ss. 11—23. As to Ireland, see the 35 & 36 Vict. c. 57.

Fraudulent preferences. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor, with a view of giving such creditor a preference over other creditors, is fraudulent and void as against the trustee in Bankruptcy if the debtor become bankrupt within three months. Bankruptcy Act, 1883, s. 49.

Fraudulent Settlement. If a marriage settlement comprise property without which the settlor cannot pay his debts, or contain a covenant for the future settlement of property in which the settlor has no present interest, then, if the settlor become bankrupt, *and* the settlement appear to have been made to defeat creditors, the Bankruptcy Court may refuse an order of discharge, as if he had been guilty of fraud. Bankruptcy Act, 1883, s. 29.

Fraunc, or **Fraunke Ferme.** See FRANKFERM.

Fraus est celare fraudem. 1 Vern. 270.—(It is fraud to conceal fraud.)

Fraus est odiosa et non præsumenda. Cro. Car. 550.—(Fraud is odious and not to be presumed.)

Fraus et dolus nemini patrocinari debent. 3 Co. 78.—(Fraud and deceit ought not to benefit any person.)

Fraus et jus nunquam cohabitant. Wing. 680.—(Fraud and justice never dwell together.)

Fraus latet in generalibus.—(Fraud lies hid in general expressions.)

Fraus legis (fraud of law), using legal proceedings with a felonious purpose.

Fraus meretur fraudem. Plow. 100.—(Fraud merits fraud.)

Fraxinetum, a wood of ash trees.—*Co. Litt.* 4 *b.*

Fray. See AFFRAY.

Fred, peace.

Fredstole, or **Fridstol**, sanctuaries, seats of peace.—*Gibson's Camden.*

Fredum, a composition anciently paid by a criminal to be freed from prosecution, of which the third part was lodged in the Exchequer. See *Montesquieu's Spirit of Laws*, l. 30, c. 20.

Fredwit, a liberty to hold courts and make amerciaments.—*Cowel.*

Free-bench [*sedes libera*, Lat.], a widow's dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an excrescence growing out of the husband's interest, and is indeed a continuance of his estate.

The term *free-bench* is equally applicable to the estate which, by the custom of some manors, a husband takes in his wife's copyhold lands after her death, and anciently it was indiscriminately applied to that and to the widow's dower, but now the estate of the husband is called his curtesy, while the term free-bench is confined to the widow.

Since free-bench is only claimable by special custom, the estate which a widow is to take, both as to its quantity, quality, and duration, must be such as the custom prescribes. It is generally a third for her life, as at common law, but it is sometimes a fourth part only, and sometimes but a portion of the rent. In many manors the wife takes the whole for her life, in others she takes the inheritance.

Frequently the customary right is *durante viduitate*, and in some cases it is confined to her chaste widowhood. See COPYHOLD.

Free-bench differs from dower at the common law, in that the former, unless by particular custom, does not attach, even in right, till the actual decease of the husband; whereas the right to dower at the common law attaches immediately on marriage, and the widow is entitled to dower in lands of which the husband was seised *at any time during the coverture*. As the right of the wife to free-bench does not attach till the husband's death, any alienation by him alone, to take effect in his lifetime, though without the concurrence of the wife, whether by surrender in court, by forfeiture, or in consequence of enfranchisement, bars the claim of the widow. And even if the husband make a lease for years, though by license of the lord, the widow shall not avoid it. But in this case it must be remarked that her claim to free-bench is not defeated by reason of the husband's *not* dying seised (though it should seem to be so urged in some of the books), as he would most indisputably die seised in the present instance; he being the copyholder, and not the lessee, and moreover the possession of the lessee at common law would be the possession of the lessor; and, therefore, it should seem that the widow would not in this case be barred only *quoad* the lease, and consequently be entitled on its expiration. By special custom, however, the widow shall have her free-bench, notwithstanding such lease, though without prejudice to it, she receiving the rent, etc. And if the husband contract for the sale of his copyhold, and die without any actual surrender, a Court of Equity will compel the widow to relinquish her free-bench. *A fortiori*, if the husband actually surrender, and die before admittance of the surrenderee, she shall be barred: for the subsequent admittance of the surrenderee, though after the death of the husband, relates to the time of the surrender, and so precedes the title of the wife.

So if the husband became a bankrupt, and died after the execution of the bargain and sale by the commissioners, and before the admittance of the vendee, the widow of the bankrupt was not entitled to her free-bench.

And the husband must die seised, at least by relation, in order to enable the widow to claim, so there can be no disseisin of a copyhold; and, though a person should enter with strong hand, yet the copyholder would continue tenant to the lord; and, therefore, if the husband was, *before such entry*, seised, he would, *notwithstanding such entry*, continue seised; and such entry would not defeat the title of the wife.—2 *Wat. Cop.* 82 *et seq.*

The Dower Act, 3 & 4 Wm. IV. c. 105, does not affect equitable copyholds, but only freeholds.

The widow of a purchaser or heir at law, who dies before admittance to his copyhold, is nevertheless dowable, since the admittance has reference back to the contract or to the ancestor's decease.

A jointure before marriage, in lieu of dower and thirds, out of any lands of freehold and inheritance, is a bar in Equity to free-bench, which is a customary right *nomine dotis*; so is a devise with the same intent.

When a widow is dowable by custom, her estate has all the incidental qualities of dower at common law. Since the wife's estate is a continuation of that of her husband, she holds of the lord, and is not in need of admittance except by special custom, or, at least, it will suffice if she challenge her admittance. Admittance, however, is not dispensed with in gavelkind lands, or where the widow only takes a portion of the husband's copyhold lands, and then the heir must assign her free-bench before her entry, and he could be compelled to do so by plaint in the nature of a writ of dower, duly levied in the manor court.

Formerly the remedy for free-bench was by a plaint in the manor court, which was unaffected by 3 & 4 Wm. IV. c. 27; but by the Common Law Procedure Act, 1860, 23 & 24 Vict. c. 126, s. 26, the plaint was abolished, and in lieu thereof an action might be brought

by writ of summons issuing out of the Court of Common Pleas (afterwards the Common Pleas Division of the High Court, and now the Queen's Bench Division of that Court), upon which was to be endorsed a notice that the plaintiff intended to declare for free-bench. See COPYHOLD.

Free-board, land claimed in some places, more or less, beyond or without the fence, said to be two feet and a half.—*Mon. Angl.*, t. 2, p. 141.

Free-borough men, such great men as did not engage like the frank-pledge men for their decennier.—*Jacob.*

Free-chapel, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the Crown has granted the privilege. —1 *Burn's E. L.* 298.

Free-course, having the wind from a favourable quarter.—*Merc. Law.*

Freedom of a Borough, the right to enjoy the privileges of a freeman. Before the Municipal Corporations Act, 1835, these privileges, in many cases valuable either from conferring, especially before the Reform Act, 1832, a limited parliamentary franchise or from other causes, could be sold or given away; but the Act of 1835, s. 3, enacted that no person should be admitted a freeman by gift or purchase, and s. 202 of the Municipal Corporations Act, 1882, repeats this enactment, which is, however, qualified by the Honorary Freedom of Boroughs Act, 1885, 48 & 49 Vict. c. 29, in favour of the admission to be honorary freemen of persons of distinction and persons who have rendered eminent services to the borough.

Free-fishery, a royal franchise; being the exclusive right of fishing in a public river. Grants of this description cannot now be made, the Great Charter and its confirmations prohibiting it.

Freehold, one of the two chief tenures known in ancient times by the phrase 'tenure in free socage,' and the only free lay-mode of holding property. It is derived from the feudal system, but the services connected with it were honourable and mild. The annihilation of the feudal severities has left this tenure unshackled, and by far the greater part of the real property in this country is freehold.

Such an interest in lands of frank tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called *heirs*, and he whom they thus represent, the *ancestor*. When the interest extends beyond the ancestor's life, it is called a *freehold of inheritance*, and when it only endures for the ancestor's life, it is a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

Free-holder, he who possesses a freehold estate.

Freehold Land Societies, designed for the purpose of enabling working-men to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated. See *Stone's Build. Soc.*, 96 *et seq.*

Freeman [*liber homo*, Lat.], an allodial proprietor; one born or made free to enjoy certain municipal immunities and privileges; the privileges of freemen were preserved by the Municipal Corporations Act, 1835, and continued by Part X. of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50. See FREEDOM OF BOROUGH.

Freemasons, secret societies formed, as it is supposed, for the mutual assistance and the promotion of friendship and good fellowship. They are protected by law. See 39 Geo. III. c. 79, ss. 5, 7; and 57 Geo. III. c. 10, s. 26.

Freemen's roll, a list of all persons admitted burgesses, or freemen in respect of those rights which are reserved by the Municipal Corporations Act (5 & 6 Wm. IV. c. 76), as distinguished from the burgesses newly created by the act, and entitled to the rights which it confers, who are entered on the burgess-roll. See 6 & 7 Vict. c. 18.

Free-services, such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay a sum of money, or the like.

Free-ships, neutral ships.

Free-warren, a royal franchise, granted by the Crown to a subject for the preservation or custody of beasts and fowls of warren.

Freight, the sum paid by a merchant or other person chartering a ship or part of a ship, or sending goods in a general ship, for the use of such ship or part, or the conveyance of such goods during a specified voyage or for a specified time. The freight is most commonly fixed by the charter-party, or bill of lading, but in the absence of any formal stipulation on the subject it would be due according to the custom or usage of trade.

In the absence of an express contract to the contrary, the entire freight is not earned until the whole cargo be ready for delivery, or has been delivered to the consignee, according to the contract for its conveyance. As to the shipowner's lien for freight, see 25 & 26 Vict. c. 63, s. 66 *et seq.*—*Mau. and Pol. Sh.; Macl. Sh.*

Frenchman. In early times this term was applied to every stranger or outlandish man. —*Bracton*, lib. 3, tr. 2, c. 15. See FRANCIGENÆ.

Frend-wite [fr. *freond*, Sax., friend, and *wite*, mulct], a fine exacted of him who harboured an outlawed friend.—*Blount.*

Frequentia actûs multum operatur. 4 Co. 78. —(The frequency of an act operates much).

Fresh disseisin, that disseisin which a person might formerly seek to defeat of himself, and by his own power, without resorting to the law; as where it was not above fifteen days old, or of some other short continuance. —*Brit.* c. v.

Fresh-fine, a fine that has been levied within a year.—*Westm. Cap.* 45.

Fresh-force, a force newly done in any city, borough, etc.—*F. N. B.* 7; *Old. Nat. B.* 4.

Fresh suit, or **pursuit,** such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension. The party pursuing then had back again his goods, which otherwise were forfeited to the Crown.—*Staundf. Pl. Cor.*, lib. 3, cc. 10, 12.

Frettum, frectum, the freight of a ship; freight-money.—*Cowel.*

Fretum Britannicum, the straits between Dover and Calais.

Friar [fr. *frère*, Fr.; *frater*, Lat., brother], an order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend.

Friberough, or **Frithburgh,** the Norman term for frank-pledge.

Fribusculum, a temporary separation between husband and wife.—*Civil Law.*

Friendless man, an outlaw, because he was denied all help of friends.—*Bracton*, lib. 3, tr. 2, c. 12.

Friendly societies, associations supported by subscription for the relief and maintenance of the members or their wives, children, relations, and nominees, in sickness, infancy, advanced age, widowhood, etc. By the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), various prior statutes regulating these societies have been in whole or in part repealed, and the law has been consolidated and amended. Such societies may be formed for providing payments on birth of a member's child, or on death of a member, or for relief and maintenance of members and their husbands, wives, children, etc., in old age or sickness, the endowment of members at any age, the insurance of tools against fire, or of cattle, for working men's clubs, or for any other purpose authorised by the Treasury. Before any such society can be established, its rules must have been transmitted to and approved of by the central office for the registration of Friendly Societies. The Act was amended in 1876 by 39 & 40 Vict. c. 32 as to conversion of Friendly Societies into branches, and other matters; in 1879 by 42 Vict. c. 9 as to the receipt of contributions at a greater distance than ten miles from the registered offices; and in 1887 by 50 & 51 Vict. c. 56, as to various small details, s. 18 of that act empowering the Queen's Printers to print the act of 1875 'with the additions, omissions, and substitutions required' by that Act. Consult *Davis* or *Pratt on Friendly Societies.*

Friends, Society of. See QUAKERS.

Friendly suit, brought by a creditor in Chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor against himself, in order to compel the creditors to take an equal distribution of the assets.—2 *Wms. Ex.*, 8th ed., 1926. See now CHANCERY.

2. Also any suit instituted by agreement between the parties to obtain the opinion of the Court upon some doubtful question in which they are interested.

Friling, or **Freeling** [fr. *freoh*, Sax., free, and *ling*, progenies], a freeman born.—*Jacob.*

Friscus, fresh, uncultivated ground.—*Mon. Angl.*, t. 2, p. 56.

Frith-borg, frank-pledge.—*Cowel.*

Frithbreach, the breaking of the peace.—*Cowel.*

Frithgar, the year of jubilee, or of meeting for peace and friendship.—*Jacob.*

Frithgilda, guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace.—*Jacob.*

Frithman, a member of a company or fraternity.—*Blount.*

Frith-soen, or **Frithstol,** an asylum; sanctuary.

Frithsoke, Frithsoken, the right of liberty of frank-pledge.—*Fleta.*

Frithsplot, or **Frith-geard,** a spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

Frodmortel or **Freomortel,** an immunity

for committing manslaughter.—*Mon. Angl.*, tom. 1, p. 173.

From ordinarily excludes the day from which the time is to be reckoned, but is construed inclusively of that day if the context requires it.

Fructus augent hæreditatem. D. A. 3, 20, 31.—(The yearly increase enhances an inheritance.)

Fructus industriales (*emblements*).

Fruit, as to larceny of, see 24 & 25 Vict. c. 96, ss. 36, 37, and c. 97, ss. 23, 24.

Fruit fallen, the produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson.

Frumgyld, the first payment made to the kindred of a person slain, the recompense for his murder.—*Leg. Edm.*

Frumstol, original or paternal dwelling.—*Anc. Inst. Eng.*

Frusca terræ, waste and desert lands.

Frussura, a breaking; ploughing.—*Cowel.*

Frustrà fit per plura quod fieri potest per pauciora. Jenk. Cent. 68; Wing. 177.—(That is needlessly done by many (words) which can be done by less.)

Frustrà legis auxilium quærit qui in legem committit.—(Vainly does he who offends against law seek the help of law.)

Frustrà petis quod statim alteri reddere cogeris. Jenk. Cent. 256.—(You ask in vain that which you might immediately be compelled to restore to another.) See CIRCUITY OF ACTION.

Frustrà probatur quod probatum non relevat. Halkerston 58.—(It is useless to prove that which, when proved, is not relevant to the question at issue.)

Frustrum terræ, a piece or parcel of land.—*Co. Litt.* 5 *b.*

Frutectum, Frutettum, Fruticetum, a place where shrubs or herbs grow.—*Jacob.*

Frymith, Fynmith, the affording harbour and entertainment to any one.—*Anc. Inst. Eng.*

Frythe, a plain between woods.—*Co. Litt.* 5 *b.*

Fuage. See FUMAGE.

Fuer, flight. It is of two kinds: (1) *fuer in fait* or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when being called in the County Court he does not appear, which legal interpretation makes flight.

Fuero jurgo, a code of Spanish law, said to be the most ancient in Europe.

Fuga catallorum, a drove of cattle.—*Fleta.*

Fugacia, a chase.—*Blount.*

Fugam fecit (*he has made flight*), said of a person who is found by inquisition to have fled for felony, etc., upon which forfeiture of goods took place. Obsolete.—7 & 8 *Geo. IV.* c. 28, s. 5; and see 33 & 34 Vict. c. 23.

Fugatio, a privilege to hunt.—*Blount.*

Fugatores carrucarum, waggoners who drive oxen without beating or goading.—*Fleta*, l. 2, c. lxxviii.

Fugitation. In Scotland, when a criminal does not obey the citation to answer, the Court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the Crown.

Fugitive offenders. Where a person accused of any offence punishable by imprisonment with hard labour for twelve months or more, has left that part of Her Majesty's dominions where the offence is alleged to have been committed, he is liable, if found in any other part of Her Majesty's dominions, to be apprehended and returned in manner provided by the 'Fugitive Offenders Act, 1881,' to the part from which he is a fugitive.

Full age, twenty-one years. A man is competent in Law to do anything as a person of full age on the day *preceding* his 21st birthday, because the completion of the 21st year is supposed to belong as much to the day *before* as to the day *after* the imaginary interval at which it takes place.

Full Court. The Judge Ordinary, with two other members of the Court for Divorce and Matrimonial Causes, constituted the Court of Appeal, and in some instances the Court of original jurisdiction, under the name of the Full Court of Divorce, the jurisdiction of which was transferred to the Court of Appeal by the Jud. Act, 1881.

Fullum aquæ, a fleam or stream of water.

Fumage, Fuage, or **Fouage** (vulgarly called *smoke-farthings*), a tax paid to the sovereign for every house that had a chimney. It is probable that the *hearth-money*, imposed by 13 & 14 Car. II. c. 10, took its origin hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M., st. 1, c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. III. c. 18. The window-duty was repealed by 14 & 15 Vict. c. 36.

Function [fr. *fungor*, Lat., to perform], employment; discharge of office.

Fundi patrimoniales (*lands of inheritance*).

Funditores, pioneers.—*Jacob.*

Funds, *public*, the name given to the public funded debt due by Government. The practice of borrowing money to defray a part of the war expenditure began, with us, in the reign of William III. In the infancy of the practice it was customary to borrow upon the security of some tax, or portion of a

tax, set apart as a fund for discharging the principal and interest of the sum borrowed. This discharge was rarely effected. The public exigencies still continuing, the loans were continued, or the taxes again mortgaged for fresh ones. At length the practice of borrowing for a fixed period, or, as it is called, upon *terminable* annuities, was abandoned, and loans made upon *interminable* annuities, or until it might be convenient for Government to pay off the principal.

In the beginning of the funding system, the term '*fund*' meant the taxes or funds appropriated to the discharge of the principal and interest of loans; those who held Government securities and sold them to others, selling, of course, a corresponding claim upon such fund. But after the debt began to grow large, and the practice of borrowing upon interminable annuities had been introduced, the meaning of '*fund*' was changed, and instead of signifying the security upon which loans were advanced, it has, for a long time, signified the principal of the loans themselves.

The National Debt Act, 1870, 33 & 34 Vict. c. 71, consolidates the law as to the denomination of stock, payment of dividends, and transfer, and also fixes the terms and dates of redemption.

The different funds or stocks constituting the public debt are, or have been, the following:—

(I.) Funds at two-and-three-quarter per cent. interest.

Two-and-three-quarter per Cent. Consols, or Consolidated Annuities.—This stock, which forms by far the largest part of the public debt, had its origin in 1888 by the conversion into it (see CONVERSION OF STOCK) of Three per Cent. Consols, Three per Cent. Reduced, and New Three per Cents (see that title). The interest, which is paid quarterly, sinks from two-and-three-quarter per cent. to two-and-a-half per cent. in 1903, and the stock is redeemable by Parliament, entirely at its option, on and after the 5th April, 1923.

Two-and-three-quarter per Cents of 1884.—A very small stock formed in 1884 by the conversion into it of Three per Cent. Consols, Three per Cent. Reduced, and New Three per Cents.

(II.) Funds at three per cent. interest.

(*a*) *Three per Cent. Consols, or Consolidated Annuities.*—This stock formed, before 1887, by far the largest portion of the public debt. It had its origin in 1751, when an Act was passed consolidating (hence its name) several separate stocks bearing an interest of three per cent. into one general stock. By the National Debt Act, 1870, it was redeemable on one year's notice in amounts of not less than 500,000*l.* Notice was, on the 5th of July, 1888, given that it would be redeemed, and it has been redeemed, accordingly.

(*b*) *Three per Cent. Reduced Annuities.*—This fund was established in 1757. It consisted, as the name implies, of several funds which had previously been borrowed at a higher rate of interest; but, by an Act passed in 1749, it was declared that such holders of the funds in question as did not choose to accept in future a reduced interest of three per cent. should be paid off: an alternative which comparatively few embraced. Redeemable, and redeemed in like manner as consols.

(*d*) *Debt due to the Bank of England.*—This consists of the sum of 11,015,100*l.* lent by the Bank to the public at three per cent. This must not be confounded with Bank capital, on which the shareholders receive dividends.

(III.) Other funds.

(*a*) *New Three-and-a-Half per Cent. Annuities.*

(*b*) *New Two-and-a-Half per Cent. Annuities.* amounting to 3,960,354*l.* Funds (*a*) and (*b*) were created in the year 1854, when Government paid off the holders of the South Sea Old and New Three per Cent. Annuities, and the Three per Cent. Annuities of 1726 and 1751, giving the holders the option of being paid off, or taking stock in either of these two funds upon certain terms.

(IV.) Annuities. The acts 48 Geo. III., 10 Geo. IV. c. 24, and 3 & 4 Wm. IV. c. 14, authorise the commissioners for the reduction of the national debt to grant annuities, for terms of years, and life annuities, accepting in payment either money or stock, according to rates specified in tables to be approved by the lords of the treasury. Annuities for terms of years are not granted for any period less than ten years.

Fundus, the bottom or foundation of a thing; from *fud*, *βυθ-ός*, *πυθ-μήν*, the *n* in *fundus* being used to strengthen the syllable. *Fundus* is often used as applied to land, the solid *substratum* of all man's labours.—*Smith's Dict. of Antiq.*

Funeral charges. An executor or administrator should bury the deceased testator or intestate in a manner suitable to the estate he has left, and the expense of the burial will be allowed before all other debts and charges; but if the personal representative be extravagant, he commits a *devastavit*, for which he will be answerable to the creditors or legatees.

Fungibiles res, a term applied in the Civil Law to things of such a nature as that they could be replaced by equal quantities and qualities, because *mutuâ vice funguntur*, they

replace and represent each other; thus, a bushel of wheat. A particular horse would not be *fungibilis res.*—*Sand. Just.*, 7th ed., 328.

Fungibiles, movable goods, which may be estimated by weight, number, or measure; such as corn, wine, or money.

Furandi animus (*an intent of stealing*).

Furca [fr. *farkah*, Heb., to divide], the gallows.—*Cowel.*

Furcam et flagellum (*the gallows and whip*), the meanest of all servile tenures, when the bondman was at his lord's disposal, both life and limb.

Furigeldum, a mulct paid for theft.—*Jacob.*

Furiosis nulla voluntas est. D. 50, 17, 5; D. 1, 18, 13, s. 1.—(A madman has no free will.)

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit. 4 Co. 126.—(A madman who knows not what he does cannot make a bargain, nor transact any business.)

Furlong [fr. *furlang*, A.-S.; *furlongus, ferlingus, ferlingum*, low Lat.], quasi *a furrow long*, that is, bounded or terminated by the length of a furrow, i.e., *quod uno progressu aratrum describit antequam regreditur*; this equals 40 poles, or 220 yards, being the eighth part of a mile.—Weights and Measures Act, 1878. *Spelman Gloss. Arch.* Also, as *Mins.* says, the eighth part of an acre. *Stadium* and *quarentena terræ* are sometimes used for a furlong.—*Co. Litt.* 5 *b.*

Furnagium. See FORNAGIUM.

Furnival's Inn, formerly an Inn of Chancery. See INNS OF CHANCERY.

Furst and Fondung, time to advise or take counsel.—*Jacob.*

Further advance, or **charge,** a second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance.

Further assurance, Covenant for, one of the usual agreements entered into by a vendor for the protection of the vendee's interest in the subject of purchase, to the effect that the vendor will, at the request and cost of the vendee, execute further conveyances, etc., for more perfectly assuring the subject-matter of the conveyance;—*implied* in conveyances made on or after Jan. 1st, 1882, by virtue of the Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. c. 41.

Further consideration, the postponed and more careful consideration by a judge of a cause, or question in it, as under R. S. C. 1883, Ord. XXXVI., Rule 21 (Chancery Division) or Rule 39, the practice under which is instituted in pursuance of s. 17 of the Appellate Jurisdiction Act, 1876, under which a judge at *nisi prius* first obtained powers to adjourn for further consideration before himself *alone.*

Further directions, when a master ordinary in Chancery made a report in pursuance of a decree or decretal order, the cause was again set down before the judge who made the decree or order, to be proceeded with. Where a master made a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 *Dan. Ch. Prac.*, 5th ed., 1233, n.

Further maintenance of the action, plea to the. See PUIS DARREIN CONTINUANCE.

Furtum [fr. φῶρ, a thief, fr. φέρειν, to carry away], theft; robbery. It is *manifestum et nec manifestum.*—*Sand. Just.*, 7th ed., 399, 400, where other kinds are enumerated; and see 2 *Reeves*, 40.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat. 3 Inst. 107.—(Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.)

Furtum non est ubi initium habet detentionis per dominium rei. 3 Inst. 107.—(There is no theft where the foundation of the detention is based upon ownership of the thing.)

Furze, growing, setting fire to, see 24 & 25 Vict. c. 97, s. 17.

Future estates, expectancies, which are, at the Common Law, of two kinds: reversions and remainders.

Future uses. See CONTINGENT USES.

Fuz, or **Fust** [Celt.], a wood or forest.

Fyht-wite, one of the fines incurred for homicide.

Fyrd, Fyrdung, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas.*

Fyrd-wite, the fine incurred by neglecting to join the fyrd; one of the rights of the Crown.—*Anc. Inst. Eng.*

G.

Gabel [fr. *gabelle*, Fr.; *gabella*, Ital.; *gafel*, Sax.], an excise, a tax on movables; a rent, custom, or service.—*Co. Litt.* 213.

Gabulos denariorum, rent paid in money. —*Seld. Tit.* 321.

Gaffoldgild, the payment of custom or tribute.—*Scott.*

Gaffoldland, property subject to the gaffoldgild, or liable to be taxed.—*Ibid.*

Gafold, rent, tribute, or tax.

Gage [fr. *gage*, Fr.], a pledge, pawn, or caution; anything given in security.

Gage, *Estates in*, those held *in vadio* or pledge. They are of two kinds: (1) *vivum vadium*, or living pledge, or vifgage; (2) *mortuum vadium*, or dead pledge, better known as mortgage.

Gager de deliverance, when he who has distrained, being sued, has not delivered the cattle distrained; then he shall not only avow the distress, but *gager deliverance*, i.e., put in surety or pledge that he will deliver them.—*F. N. B.* 67.

Gager del ley (*wager of law*).

Gainage [fr. *gainagium*, Lat.], the gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins*.—*Bract.* l. i. c. ix.

Gainery [fr. *gaignerie*, Fr.], tillage or the profit arising from it, or from the beasts employed therein.—*Stat. West.* 1, cc. 16, 17.

Gale [fr. *gavel*, Sax., a rent or duty], a periodical payment of rent.—*Spelm.* voce '*gabellum*.'

Galli-halfpence, a kind of coin which, with suskins and doitkins, was forbidden by 3 Hen. V. c. 1.

Gallivolatium [fr. *gallus*, Lat., cock], a cock-shoot, or cock-glade.

Gallon, a liquid measure, containing 231 cubic inches, or 4 quarts.

Gallows [it is used by some in the singular, but more generally in the plural], a beam laid over either one or two posts, from which malefactors are hanged. See EXECUTION OF CRIMINALS.

Game [fr. *gaman*, Sax.], all sorts of birds and beasts that are objects of the chase. The term is defined by 1 & 2 Wm. IV. c. 32, as including for the purposes of that Act 'hares, pheasants, partridges, grouse, heath, or moor-game, black-game, and bustards'; but some of its provisions are also directed to trespass in pursuit of woodcocks, snipes, quails, landrails, and coneys.

At common law game belongs to a tenant and not to a landlord, but leases frequently contain a reservation of the game to the landlord, and before 1 & 2 Wm. IV. c. 32 the right to kill game was restricted to freeholders having 100*l.* a year freehold, or leaseholders having a 99 years' leasehold of 150*l.* a year, etc. This act repeals the Qualification Act of 22 & 23 Car. II. c. 25, and (after giving the game to landlords in the case of leases made before the Act for less than 21 years—a provision now expired) protects *reservations* of game by penal provisions. The act also requires all persons killing or taking game to take out a yearly certificate, and all uncertificated persons selling it a yearly license, and makes it unlawful to kill game on a Sunday or Christmas-day, or between the days and seasons when game may be killed. The prohibited period is, *for partridges*, between 1st February and 1st September; *for pheasants*, between 1st February and 1st October; *for black game* (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton), between 10th December and 20th August; or in the county of Somerset or Devon, or in the New Forest, between 10th December and 1st September; *for grouse*, commonly called red game, between 10th December and 12th August; *for bustard* between 1st March and 1st September.

As to right of occupier to kill hares and rabbits under Ground Game Act, 1880, see HARES. See also GUN LICENSE; POACHING; *Chitty's Statutes*, vol. ii., tit. '*Game*.'

Gamekeepers. As to their appointment and authority, see 1 & 2 Wm. IV. c. 32, s. 13,

Gaming or **Gambling**, the playing any game of chance, as cards, dice, etc., for money, or money's worth.

The 33 Hen. VIII. c. 9 prohibited the keeping of any common house for dice, cards, or any unlawful games, under penalties of 40*s.* for every day of so keeping the house, and 6*s.* 8*d.* for every time of playing therein; and the 30 Geo. II. c. 24, s. 14, inflicts the same punishment upon the master of any public-house wherein labourers or servants are permitted to game, as upon the labourers and servants themselves. As to the prevention of gaming in public-houses, see 35 & 36 Vict. c. 94, s. 17, and 37 & 38 Vict. c. 49, ss. 13 and 33. By 2 Geo. II. c. 28; 13 Geo. II. c. 19; and 18 Geo. II. c. 34, the games of faro, basset, ace of hearts, hazard, passage, roly-poly, and roulette, and all other games with dice, except backgammon, are prohibited under a penalty of 200*l.* for him that shall erect the same, and 50*l.* a time for the players. The 8 & 9 Vict. c. 109 repeals so much of the 33 Hen. VII. c. 9, as prohibits bowling, tennis, and other games of mere skill. It also provides that the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person in any manner conducting the

business of any common gaming-house, shall, on conviction, be liable, in addition to the penalties of the Act of Hen. VIII., to pay such penalty (not more than 100*l.*) as shall be adjudged by the justices, or may be imprisoned with or without hard labour for not more than six calendar months; but nothing shall prevent any proceeding by indictment. (The Act 17 & 18 Vict. c. 38 still further increases the maximum penalty to 500*l.*)

Justices of the peace, at the general annual licensing meeting, may grant annual billiard licenses to such persons as they deem fit to keep billiard tables, and bagatelle boards, or the like. Several penalties are imposed for keeping such tables without a license, or allowing play between one and eight o'clock, a.m., or on Sunday, Christmas-day, or Good Friday, or on any day of public fast or thanksgiving. Winning money by 'ill practice' in play is made punishable in the same way as obtaining money under false pretences; and wagers are declared to be irrecoverable at law, and wagering contracts void. See also 17 & 18 Vict. c. 38, 'An Act for the Suppression of Gaming Houses.' The Act 16 & 17 Vict. c. 119, passed for the suppression of betting-houses, provided that they should be considered gaming-houses within the meaning of the 8 & 9 Vict. c. 109. Betting in the streets is prohibited by 30 & 31 Vict. c. 134, s 23. As to unlawfully playing or betting in any street or public place, see 36 & 37 Vict. c. 38, repealing 31 & 32 Vict. c. 52. Further, by the 37 Vict. c. 15, s. 3, penalties are imposed on persons advertising, or sending letters, circulars, telegrams, etc., as to betting.

The 5 & 6 Wm. IV. c. 41 (amending 9 Anne c. 14), enacts that all notes, bills, or mortgages given for money won at play, are deemed to be given on an illegal consideration, and are void between the parties, but not in the hands of indorsees or purchasers for valuable consideration, without notice. See *Chitty's Statutes*, vol. ii., tit. '*Games*.'

Ganancial [Sp.], a species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage.—1 *Burge Confl. Laws*, 418.

Gangiatori, officers in ancient times whose business it was to examine weights and measures.—*Skene.*

Gang-week [fr. *gangan*, Sax., to go], the time when the bounds of the parish are lustrated or gone over by the parish officers—rogation week.—*Encyc. Lond.*

Gangs (Agricultural) Act, 30 & 31 Vict. c. 130. By this Act, which recites that in certain counties in England certain persons, known as gang-masters, hire children, young persons, and women, with a view to contracting with farmers and others for the execution on their lands of various kinds of agricultural work, regulations are made with respect to the employment of children, young persons, and women, by such gang-masters.

Gantelope (pronounced gauntlet), [fr. *gant*, Dut., all; and *loopen*, to run], a military punishment, in which the criminal running between the ranks receives a lash from each man.—*Encyc. Lond.* This was called running the gauntlet.

Gaol [fr. *gaola*, Lat.; *geole*, Fr., a cage for birds], a prison; a strong place for the confinement of offenders against the law. See PRISONS.

Gaol Delivery, a commission to the judges, etc., to try and deliver every prisoner in gaol when they arrive at the assize town. See ASSIZE.

Gaol Sessions, a special session of county justices of the peace, constituted under 5 Geo. IV. c. 12, for the purpose of regulating all matters connected with county gaols; under 4 Geo. IV. c. 64 repealed, but in great part re-enacted by the Prisons Act, 1865.

Gaoler, the master or keeper of a prison; one who has the custody of a place where prisoners are confined.

Garb, a bundle or sheaf of corn; a handful. —*Fleta*, l. 2, c. xii.

Garbales decimæ, tithes of corn.

Garbler of Spices, an ancient officer in the city of London, who might enter into any shop, warehouse, etc., to view and search drugs and spices, and garble and make clean the same; or see that it be done.—6 *Anne* c. 16.

Garcio stolæ (*groom of the stole*).—*Pl. Cor.* 21 *Edw. I.*

Garciones, servants who follow a camp.—*Wals.* 242.

Gard [fr. *garde*, Fr.], wardship, care, custody.

Gardens. The Act 26 & 27 Vict. c. 13, provides for the protection of gardens and ornamental grounds in cities and boroughs. As to stealing or destroying any fruit or vegetable production in gardens, etc., see 24 & 25 Vict. c. 96, ss. 36, 37; and c. 97, ss. 23, 24. See also PARKS; and as to compensation, on quitting, to tenants of market gardens, see ALLOTMENTS.

Gardia, custody.—*Lib. Feud.*

Garlanda, a chaplet, coronet, or garland.

Garnestura, victuals, arms, and other implements of war, necessary for the defence of a town or castle.—*Mat. Par.* 1250.

Garnish, money paid by a prisoner on his going to prison. Forbidden by 4 Geo. IV. c. 43, s. 12, r. 23. Also, warning an heir; abolished by 6 Geo. IV. c. 105, s. 13.

Garnishee, a person warned not to pay money which he owes to another person, when the latter is indebted to the person warning or giving notice. See ATTACHMENT OF DEBTS; FOREIGN ATTACHMENT.

Garnishment, warning not to pay money, etc., to a defendant, but to appear and answer to a plaintiff-creditor's suit. It usually arose in cases of detinue thus:—If a defendant alleged that certain deeds were delivered to him by the plaintiff and another person upon condition, such defendant prayed that the other person might be warned to plead with the plaintiff as to whether the conditions were performed or not, he, the defendant, being willing to deliver the property to the person entitled to it; thereupon a process of garnishment, monition, or notice issued, and all parties were brought before the Court that the cause might be thoroughly and justly determined. It was nearly allied to the proceedings in interpleader.—3 *Reeve's Hist. Eng. Law*, 448.

Garnisture, a furnishing or providing.

Garranty. See GUARANTY.

Garson, a menial servant.—*Toland.*

Garsummune, a fine or amerciament.—*Spelm.*

Garth [same as girth, fr. *gyrdan*, A.-S., to surround, to enclose], an enclosure about a house, church, etc.; a close; a dam or wear; a place formed at the side of a river that the fish might be more easily taken.

Gas. See the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), amended by 34 & 35 Vict. c. 41; and as to the regulation of the measures used in sale of, see 22 & 23 Vict. c. 66; 23 & 24 Vict. cc. 125 and 146; 24 & 25 Vict. c. 79; and 29 & 30 Vict. c. 82 s. 14; and the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41). As to the metropolis, see 23 & 24 Vict. c. 125, and 24 & 25 Vict. c. 79. By the Gas and Waterworks Facilities Act, 33 & 34 Vict. c. 70 (amended by 36 & 37 Vict. c. 89), provisions are made whereby such undertakings may be authorised by provisional orders.

By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 161, it is provided that any urban authority may contract with any person, for the supply of gas or other means of lighting their district, and provide lamps and other materials for such lighting; or where there is not any company or person authorised by parliament to supply gas, may themselves undertake to supply gas to their district or such part of it as is not within the limits of supply of any such company or person. By s. 162, an urban authority for the purpose of supplying gas to their district may (with the sanction of the Local Government Board) buy, and the directors of any gas company (duly authorised as required by the Act) may sell and transfer their undertaking to such authority, on agreed terms. Consult *Michael* and *Will on Gas and Water*.

Gastaldus, a temporary governor of the country.—*Blount.*

Gaudies, double commons.—*University term.*

Gaudy [fr. *gaudium*, Lat.], a feast, a festival, a day of plenty.—*Ibid.*

Gauge of Railways, their measure or width; fixed, with some exceptions, at 4 feet 8½ inches in Great Britain, and 5 feet 3 inches in Ireland, by 9 & 10 Vict. c. 57.

Gauger, an officer who ascertains the quantity of wines or spirits for Revenue purposes.

Gaugetum, a gauge or gauging; a measure of the contents of any vessel.

Gavel. See GABEL.

Gavelcester [*sextarius vectigalis*, Lat.], a certain measure of rent-ale.—*Cowel.*

Gavelet [fr. *gaveletum*, Lat.], an ancient and special kind of *cessavit* used in Kent and London for the recovery of rent. Obsolete. The statute of Gavelet is 10 Edw. II.—2 *Reeves*, c. xii., p. 298.

Gavelgeld, payment of tribute or toll.—*Mon. Angl.*, tom. 3, 155.

Gavelkind, derived from the Saxon word '*gafol*,' or as it is otherwise written, '*gavel*,' which signifies '*rent*,' or a '*customary performance of husbandry works*,' and therefore the land which yielded this kind of service, in contradistinction to knight-service land, was called 'GAVELKIND,' that is, '*land of the kind that yields rent*.' Lambarde (*Perambulations of Kent*, ed. 1656, p. 585) first advanced and promulgated this supposition, in opposition to the opinion of Lord Coke, which, until then, was generally received.

Gavelkind land descends in the right line to all the sons equally, being an exception to the law of primogeniture. In default of sons, it descends to the daughters in the ordinary manner.

It is to be remarked, that though females, claiming in their own right, are postponed to males, yet they may inherit together with males by representation. If a man have three sons, and purchase lands held in gavelkind, and one of the sons dies in the lifetime of his father, leaving a daughter, she will inherit the share of her father; yet she is not within the words of the custom, *inter hæredes masculos partibilis*; for she is no male, but the daughter of a male coming in his stead *jure representationis*.

This custom extends also to the collateral line, for it has been resolved that where one brother dies without issue, all the other

brothers shall inherit from him; and in default of brothers their respective issue shall take *jure representationis*. But where the nephews succeed with an uncle, the descent is *per stirpes* and not *per capita*; and so from the nature of the thing it must be, where the sons of several brothers succeed, no uncle surviving, for though in equal degree, they stand in the place of their respective fathers.

The partible quality of *gavelkind* extends also to estates-tail, for if a person die seised in tail of lands held in *gavelkind*, all his sons shall inherit together as heirs of his body.

Since the 1st January, 1834, the half-blood inherit, for the Inheritance Act (s. 9) applies to land of every tenure (s. 1).

The other special customs of this tenure are: (1) a wife is dowable of one-half, instead of one-third of the land; (2) a husband will be tenant by the courtesy, whether there be issue born or not, but only of one-half so long as he remains unmarried; (3) gavelkind lands were not liable to escheat for felony, the maxim being, 'The father to the bough, the son to the plough,' although they were for treason or want of heirs (see 33 & 34 Vict. c. 23, abolishing escheat or forfeiture for treason and felony); and (4) an heir in gavelkind at fifteen years may make a contract and sell his estate for money; but the livery upon the feoffment (the only deed which can be adopted) must be made by the heir in person; for, being under age, he cannot, by the common law, appoint an attorney.

Gavelkind, before A.D. 1066, was the general custom of the realm; the feudal law of primogeniture superseded it. It was retained in Kent, because, according to the historical legend, the Kentish men surrounded William I. with a moving wood of boughs, just after the slaughter at Hastings, and for that service obtained a confirmation of their ancient rights.

By 34 & 35 Hen. VIII. c. 26, all *gavelkind* lands in Wales were made descendible to the heir according to the common law; from which it would appear that the tenure likewise obtained in that principality. And even in Kent, lands belonging to various persons have been disgavelled by statute, especially the 31 Hen. VIII. c. 3, and made descendible according to the course of the common law. This can only be effected by Act of Parliament. Gavelkind is met with occasionally, in a modified form, in copyholds.

Primâ facie all land in Kent is gavelkind, except such as is disgavelled by particular statutes (which should always be noticed in transactions relating to Kentish property); and as to such land the custom is never pleaded, but is presumed, and the Courts are bound to take judicial notice of it.—1 *Mod.* 98. *Steph. Com., I., IV.*

Gavelman, a tenant liable to tribute.—*Blount.*

Gavelmed, the duty or work of mowing grass or cutting meadow land, required by the lord from his customary tenants.—*Somn.*

Gavelwerk, the personal labour of customary tenants.

Gazette [fr. *gaza*, treasure; or *gazetta*, the name of a coin, about a farthing], the official newspaper of the Government, said to have been first published at Oxford in 1665; on the removal of the Court to London, the title was changed to the *London Gazette*. It is published on Tuesdays and Fridays, and contains all the acts of state, proclamations, and appointments to offices under the Crown; also all Orders in Council, and such other Orders, Rules, and Regulations as are directed by Act of Parliament to be published therein; also dissolutions of partnership, and notices of proceedings in bankruptcy. It is evidence of such governmental proceedings as it contains.—5 *T. R.* 436.

Gebocced [A.-S.], conveyed.

Geburscript, neighbourhood or adjoining district.—*Cowel.*

Geburus [fr. *gebure*, Sax., a farmer], an inhabitant of the same geburship or village.

Geld, a mulct, compensation, value, price. *Angeld* is the single value of a thing; *twigeld*, double value, etc.—*Cowel.*

Geldable, taxable.—*Cowel.*

Gemot, a mote or moote, meeting, public assembly. The various kinds were—(1) The *folc-gemot*, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual. (2) The *shire-gemot*, or county court, which met twice during the year. (3) The *burg-gemot*, which met thrice in the year. (4) The *hundred-gemot*, or hundred court, which met twelve times a year in the Saxon ages; but afterwords a full, perhaps an extraordinary, meeting of every hundred was ordered to be held twice a year. This was the sheriff's tourn, or view of franc-pledge. (5) The *halle-gemot*, or the court-baron. (6) The *wardemotus*.—*Anc. Inst. Eng.*

Genealogy [fr. γενεά, Gk., and λόγος], history of the succession of families; enumeration of descent in order of succession; pedigree.—*Encyc. Lond.*

Genearch [fr. γενεά, Gk., and ἀρχός], the head of a family.

Geneath, a hind or farmer.

Gener [Lat.], a son-in-law.

General agent, a person who has general authority in regard to a particular object or thing. See *Story on Agency*, ss. 17—19.

General average, the contribution made by the parties to an adventure towards a loss, consisting in the sacrifices made or expenses incurred by some of them, for the common benefit of ship and cargo. See *Hopk. on Av.*

General Council (of the Catholic Church), a council consisting of members of the Church from most parts of the world, but not from every part, as an Ecumenical Council.

General demurrer, was a pleading at common law, which excepted to the sufficiency of a pleading in general terms, without showing specifically the nature of the objection. It was resorted to when the objection was to matter of substance. See DEMURRER.

General Gaol Delivery. See GAOL DELIVERY.

General issue, a plea simply traversing *modo et formâ* the allegations in the declaration, as the plea of 'not guilty' in torts; 'never indebted' to money counts, or '*nunquam assumpsit*' to actions on simple contract (C. L. P. Act, 1852, sched. B., 37). By certain statutes, e.g., by 11 & 12 Vict. c. 44, s. 17, whereby justices of the peace may plead not guilty by statute, the general issue might be pleaded and special defences relied on under it, but the defendant must have given notice in the margin of the plea of the particular statute conferring this privilege, and this form of pleading is expressly kept up by R. S. C. 1883, Ord. XIX., r. 12, and Ord. XXI., r. 19, but otherwise pleading the general issue was abolished by the Judicature Acts, R. S. C. 1883, Ord. XIX., r. 4, providing that every pleading shall contain, and contain only, a statement in a summary form on which the party pleading relies.

In criminal proceedings the general issue is 'not guilty,' which is pleaded *vivâ voce* by the prisoner at the bar.

General lien, a right to detain a chattel, etc., until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law, depends entirely upon contract, express or implied, from the special usage of dealing between the parties. See LIEN.

General Quarter Sessions of the Peace. See SESSIONS.

General ship, a ship employed by the owners on a particular voyage in the conveyance of the goods of a number of persons unconnected with each other.

General tail, an estate tail where one parent only is specified, whence the issue must be derived, as to A. and the heirs of his body. See TAIL.

General verdict, the decision of the jury, either for the plaintiff or defendant generally. See VERDICT.

General warrant, a process from the secretary of state, to arrest (without naming any person) the author, printer, and publisher of such libels as were specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons.—*Com. Jour.*, 22nd April, 1766.

Generale, the usual commons in a religious house, distinguished from *pietantiæ*, which on extraordinary occasions were allowed beyond the commons.—*Cowel.*

Generale nihil certi implicat. Wing. 164. —(A generality involves no particularity.)

Generalia specialibus non derogant. Jenk. Cent. 123, cited L. R., 4 Exch., 226.—(General words do not derogate from special.)

Generalia verba sunt generaliter intelligenda, 3 inst. 76.—(General words are to be understood generally.)

Generalibus specialia derogant. Lofft. 351; Halkerston, 51.—(Special things derogate from general.)

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa. 8 Rep. 154.—(A general clause is not to be extended to things which have been specifically embraced.)

Generalis regula generaliter est intelligenda, 6 Rep. 65.—(A general rule is to be understood generally.)

Generals of Orders, chiefs of the several orders of monks, friars, and other religious societies.

Generatio, the issue or offspring of a mother-monastery.—*Cowel.*

Generosus [Lat.], a gentleman.

Gen. fil. (*generosi filius*), the son of a gentleman.

Gens, race, nation, great family.

Gentleman [fr. *gentilhomme*, Fr.; *gentilhuomo*, Ital., i.e., *homo gentilis*, Lat., a man of ancestry, however high his rank]. All persons above yeomen; whereby noblemen are truly called gentlemen.—*Smith de Rep. Ang.* l. 1, cc. xx., xxi.

The word was not employed as a legal addition until about the time of Henry V.

The gentry may be divided into three classes: (I.) They who derive their stock with arms from their ancestors, are gentlemen of blood and coat-armour. They are of course the most noble who can prove the longest uninterrupted continuance of nobility in the families of both their parents.

(II.) They who are ennobled, by knighthood or otherwise, with the grant of a coat-

of-arms, are gentlemen of coat armour, and give gentility to their posterity. Such have been scornfully designated '*gentlemen of paper and wax.*'

(III.) They who, by the exercise of a liberal profession, or by holding some office, are gentlemen by reputation, although their ancestors were ignoble, as their posterity remains after them.—2 *Steph. Com.*, bk. v., chap. ix.

Gentleman Usher, one who holds a post at Court to usher others to the presence, etc.

Gentlewoman, a woman of birth above the common; an addition of a woman's state or degree.

Genus, in logic, is the first of the universal ideas, and is when the idea is so common that it extends to other ideas which are also universal: e.g., incorporeal hereditament is *genus* with respect to a *rent*, which is *species*.—*Woolley's Introd. to Logic*, 45; and 1 *Mill's Log.* 133. See EJUSDEM GENERIS.

Geological Survey Acts. See 8 & 9 Vict. c. 63, and 14 & 15 Vict. c. 42.

George-Noble, a gold coin, value 6*s.* 8*d.*—*Leake.*

George, St., Knight of. See GARTER.

German [fr. *germain*, Fr.; *germanus*, Lat.], brother; one approaching to a brother in proximity of blood: thus the children of brothers and sisters are called cousins-german.

Gerontocomium [fr. γέρων, Gk., an old man, and κομέω, to take care of], an almshouse for old people.—*Encyc. Lond.* Their managers are called *gerontocomi.*

Gersumarius, fineable; liable to be amerced at the discretion of the lord of a manor.—*Cowel.*

Gestation. See BIRTH.

Gestio pro hærede (*behaviour as heir*), conduct by which the heir renders himself liable for his ancestor's debts, as by taking possession of title-deeds, receiving rents, etc. —*Scotch Phrase.*

Gestu et fama, an obsolete writ, resorted to when a person's good behaviour was impeached.—*Lamb. Eiren.*, l. 4, c. 14.

Gewineda, the ancient convention of the people to decide a cause.—*LL. Æthel.* c. i.

Gewitnessa, the giving of evidence in our ancient British Law.—*Leg. Ethel.* c. l.

Gewrite, writings, deeds, or charters.

Ghirdawar, Girdwar, an overseer of police, under whom the *goyendas* or informers act.—*Indian.*

Gibbet [fr. *gibet*, Fr.], a gallows; the post on which malefactors are hanged, or on which their bodies are exposed—a practice abolished in England by 4 & 5 Wm. IV. c. 36. It differs from a common gallows in that it consists of one perpendicular post, from the top of which proceeds one arm; except it be a double gibbet, which is formed in the shape of the Roman capital T.—*Encyc. Lond.*

Gift. The old text-writers made a *gift* (*donatio*) a distinct species of deed, and describe it as a conveyance applicable to the creation of an estate-tail; while a feoffment they strictly confine to the creation of a fee simple estate. The operative verb is 'give,' which no longer implies any covenant in Law (8 & 9 Vict. c. 106, s. 4), and the deed requires livery of seisin. It was in consequence of entails being thus originally created that the grantor was called the donor, the grantee in tail the donee, and the entail the gift or donation, the issue taking *per formam doni.* It is almost obsolete.

A gift is now understood to be a voluntary conveyance without binding consideration, and therefore void in certain cases. A gift is likewise applied to gratuitous transfers of personalty and *donationes mortis causâ.* See DONATIO MORTIS CAUSÂ. A gift of chattels without delivery is ineffectual to pass any property unless the gift be by deed. See *Irons* v. *Smallpiece*, 2 *B. & Ald.* 551, a case approved in 1890 (after having been more than doubted) by the Court of Appeal, in *Cochrane* v. *Moore*, 25 *Q. B. D.* 57.

Gifta aquæ, the stream of water to a mill, —*Mon. Angl.*, tom. 3.

Giftoman [*Swed.*], the right to dispose of a woman in marriage.

Gilbert Acts, 17 Geo. III. c. 53, providing for the building and repairing of parsonages, and the 22 Geo. III. c. 83 first establishing unions of parishes with guardians of the poor, superseded by the Poor Law Amendment Act, 1834, and repealed by the Statute Law Revision Act, 1871.

Gild, a tax, tribute, or contribution; a society or fraternity constituted for mutual protection and benefit. Consult *Das Gildenwesen in Mittelalter, von Dr. W. E. Wilda*; and see 3 *Steph. Com.*

Gildable, liable to pay a gild.—*Cowel.*

Gilda mercatoria, a mercantile meeting or assembly. If the Crown grants to a set of men the privilege to have *gildam mercatoriam*, this is sufficient to incorporate them. —10 *Rep.* 30.

Gild-merchant, merchants privileged to hold pleas of land among themselves.—*Scott.*

Gild-rent, certain payments to the Crown from any gild or fraternity.

Gill, one-fourth of a pint-measure.

Girantem [fr. *girare*, Ital.], the drawer.—*Merc. Law.*

Gisement, cattle taken in to graze at a certain price; also the money received for grazing cattle.

Gisetaker, a person who takes cattle to graze.

Gisle, a pledge. *Fredgisle*, a pledge of peace. *Gislebert*, an illustrious pledge.—*Gibs. Camden.*

Gist of action [fr. *giste*, Fr., *gesir*, to lie; *jaceo*, Lat.], the cause for which an action lies: the ground and foundation of a suit, without which it is not maintainable.

Glandered horses. By 32 & 33 Vict. c. 70, ss. 57, 58, penalties were imposed on persons bringing glandered horses, etc., into markets, etc., and provision is made for their seizure; but the Contagious Diseases (Animals) Act, 1878, 41 & 42 Vict. c. 74, which repeals and replaces that Act, contains no such express provision, although by s. 32, subs. xxxii., it gives the Privy Council power to apply its provisions to horses and glanders and farcy. See CONTAGIOUS DISEASES (ANIMALS) ACT.

Glanville, the author of a book entitled *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, which is supposed to have been the first undertaking of the kind in any country of Europe. Though perhaps it was not written by that Ranulphus de Glanvilla who was *justitiarius Angliæ* under Henry II., yet it seems to be wholly written about the year 1181. It is little more than a sketch, as far as the plan of it goes, and is confined to proceedings in the King's Court. A translation of Glanville, with notes, was published in 1812, by Mr. Beames. See *Hale's Hist.* 168, and n. *a*; 1 *Reeves*, 221.

Glass, Excise on, repealed by 8 & 9 Vict. c. 6.

Glass-men, wandering rogues or vagrants. —1 *Jac. I.* c. 7.

Gleaning, Leasing, or **Lesing**. No right exists at common law for the poor to enter on a person's land and glean after harvest. —*Steel* v. *Houghton*, 1 *H. Bl.* 51.

Glebæ ascriptitii, villein-socmen, who could not be removed from the land while they did the service due.—*Brac.* c. 7; 1 *Reeves*, 269.

Glebariæ, turfs dug out of the ground.—*Cowel.*

Glebe, the land possessed as a part of the revenue of an ecclesiastical benefice. By s. 5 of 5 & 6 Vict. c. 54, the commissioners appointed to carry into effect the commutation of tithes may ascertain and define the boundaries of the glebe-lands of any benefice, or, with consent of the ordinary and patron, may exchange the glebe-lands for other lands within the same or any adjoining parish, or otherwise conveniently situated.

As to sale of glebe, and offer thereof for the purpose of allotments, see the Glebe Lands Act, 1888, 51 & 52 Vict. s. 20, and the Glebe Land Sale Rules made by the Land Commissioners thereunder. *Lely's Statutes of Practical Utility*, for 1890, tit. "*Church and Clergy.*"

Gliscywa, a fraternity.—*Leg. Athel.* c. 12.

Glomerells, commissioners appointed to determine differences between scholars in a school or university, and the townsmen of the place.—*Jacob.*

Glossa viperina est quæ corrodit viscera textus. 11 Co. 34.—(It is a poisonous gloss which corrupts the essence of the text.)

Gloucester, Statute of, 6 Edw. I. c. 1, A.D. 1278, by which a plaintiff recovering damages was first given a right to costs.

Glove silver, extraordinary rewards formerly given to officers of courts, etc.; money formerly given by the sheriff of a county in which no offenders are left for execution to the clerk of assize and judges' officers.—*Jacob.*

Gloves. It is an ancient custom on a maiden assize, when there is no offender to be tried, for the sheriff to present the judge with a pair of white gloves.—It is an immemorial custom to remove the glove from the right hand on taking oath.

Glycerine (Nitro). See EXPLOSIVE SUBSTANCES, and 38 Vict. c. 17, repealing 32 & 33 Vict. c. 113.

Glyn, or **Glen** [fr. *glyn*, Erse], a hollow between two mountains; a valley.—*Co. Litt.* 5 *b.*

God-bote, an ecclesiastical or church fine paid for crimes and offences committed against God.—*Cowel.*

God-gild, that which is offered to God or His service.—*Jacob.*

Godpenny, earnest money given to a servant when hired.

God's acre, a churchyard.

Going through the Bar. The Chief of a Common Law Court demanding of every member of the bar, in order of seniority, if he has anything to move; done at the sitting of the Court each day except Special Paper days, and other days on which motions are not taken. See also LAST DAY OF TERM.

Going to the country. When a party, under the system of pleading before the Common Law Procedure Act, finished his pleading by the words, 'and of this he puts himself upon his country,' meaning that he intended to take the verdict of a jury upon the issue of fact, this was called going to the country. It was the essential termination to a pleading which took issue upon a material fact in the preceding pleading. See VERIFICATION.

Golda, a mine.—*Blount.*

Gold-mines, a branch of the ordinary re-

venue of the kingdom. By 1 W. & M. st. 1, c. 30, and 5 W. & M. c. 6, amended by 55 Geo. III. c. 134, it is enacted that no mines of copper, tin, iron, or lead shall be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities; but that the sovereign, or persons claiming royal mines under his authority, may have the ore (other than tin ore in the counties of Devon and Cornwall), paying for the same a price stated in the Act.

Goldsmiths' notes. Bankers' cash notes (i.e., promissory notes given by a banker to his customers as acknowledgments of the receipt of money), were originally called in London goldsmiths' notes, from the circumstance that all the banking business in England was originally transacted by goldsmiths.

Goldwit, or **Goldwich**, a golden mulct.

Goliardus, a jester or buffoon.—*Mat. Par*, 1229.

Gomashtah, an agent, a steward, a confidential factor, a representative.—*Indian.*

Good, the technical term applied to pleading, to express soundness or validity.

Good abearing. See ABEARANCE.

Good behaviour, Security for. The exercise of preventive justice, which consists in being bound with one or more sureties in a recognizance or obligation to the Crown, and taken in some court, or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the Crown in the sum required, with the condition to be void if the party shall be of good behaviour, either generally or especially for the time therein limited.

Good consideration, as distinguished from *valuable* consideration—a consideration founded on motives of generosity, prudence, and natural duty; such as natural love and affection.

Good Friday. The Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 92, consolidating 39 & 40 Geo. III. c. 42, passed for the better observance of Good Friday, and 7 & 8 Geo. IV. c. 15, provides that Good Friday and Christmas-day are to be excluded as 'non business-days' in cases where the time limited by that Act for doing any act or thing is less than three days, and also by s. 14, that where the last of the three 'days of grace' (see GRACE, DAY OF) falls on Good Friday, a bill of exchange shall be payable on the preceding business day. Good Friday is a holiday in the courts and offices of the Supreme Court (R. S. C. 1883, Ord. LXI., r. 5), and is not reckoned in the computation of limited time (less than 6 days) for the purposes of the Rules (*Ib.*, Ord. LXIV., r. 2), or of limited time, not exceeding 7 days, for the purposes of the Municipal Corporations Act, 1882, by s. 230 of that Act, which also allows acts to be done on the day after Good Friday instead of on Good Friday. Houses where intoxicating liquor is sold are closed as on Sunday (Licensing Act, 1874, s. 3). See further HOLIDAY.

Good Jury. A jury of which the members are selected from the list of special jurors. See *Vickery* v. *L. B. & S. C. R. Co.*, *L. R.* 5, *C. P.* 155.

Goods and Chattels, the general denomination of things personal, as distinguished from things real, or lands, tenements, and hereditaments. See CHATTELS.

Goodwill, the advantage or benefit which is acquired by a business, beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers. It is considered a subject of sale along with the stock and premises.

Goole, a breach in a sea wall or bank; a passage worn by the flux and reflux of the sea.—16 & 17 *Car. II.* c. 11.

Gooroo guru, a spiritual guide.—*Indian.*

Goroe, or **Gors**, a wear, pool, or pit of water.—*Termes de la Ley.*

Gore, a narrow slip of land.—*Par. Ant.* 393.

Gossipred, compaternity, spiritual affinity. —*Canon Law.*

Gote, a ditch, sluice, or gutter.—23 *Hen. VIII.* c. 5.

Government, that form of fundamental rules and principles by which a nation or state is governed; the state itself.

Government Annuities. In 1833 the Act 3 & 4 Wm. IV. c. 14 enabled the industrial classes to make provision for themselves by purchasing, on advantageous terms, a government annuity for life or term of years. By the 16 & 17 Vict. c. 45, this Act, as well as the 7 & 8 Vict. c. 83, amending it, were repealed, and the old law in relation to the purchase of government annuities through the medium of savings banks was consolidated. By 27 & 28 Vict. c. 43, and 45 & 46 Vict. c. 51, 'the Government Annuities Act,' 1864 and 1882, and other 'Government Annuities Acts,' additional facilities were afforded for the purchase of such annuities, and for assuring payments of money on death, the latter Act allowing the purchase of an annuity of any amount not exceeding 100*l.* a year, the limit under the Act of 1864 having been 50*l.* a year. See ANNUITIES.

Goyend, land immediately next to a village. —*Indian.*

Grace, a faculty, license, or dispensation; also general and free pardon by Act of Parliament.

Grace, Days of, time of indulgence granted to an acceptor for the payment of his bill of exchange. It was originally a gratuitous favour (hence the name), but custom has rendered it a legal right.

The number of these days varies according to the ancient custom or express law prevailing in each particular country. In the United Kingdom, by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 14, 'where a bill' (i.e., a bill of exchange or promissory note) '*is not payable on demand*, the day on which it falls due is determined as follows:—*Three days*, called days of grace, are, *in every case where the bill itself does not otherwise* provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace,' with a proviso that where the last day of grace falls on Sunday, Christmas-day, or Good Friday, or a public fast or thanksgiving day, the bill is payable on the preceding business days, or on the succeeding business day if the last day of grace is a bank holiday (other than Christmas-day or Good Friday), or if the last day of grace is a Sunday, and the second a bank holiday. For a table showing the number of days allowed in other countries, see *Byles on Bills*, 11th ed., 205, 206.

The law of the place where the bill is payable governs the allowance or non-allowance of the days of grace.

Gradient (*adj.*), moving by steps; the deviation of railways from a level surface to an inclined plane.

Graduates, scholars who have taken a degree in an university.

Gradus [Lat.] (*a step or degree*).

Gradus parentelæ, a pedigree; a table of relationship.

Graffer, a notary, or scrivener.—5 *H.* 8, c. 1.

Graffio, Gravio, a landgrave or earl.—*Cowel.*

Graffium, a writing-book, register, or cartulary of deeds and evidences.—*Cowel.*

Grail, a gradual or book containing some of the offices of the Roman Church. The holy grail was the vessel out of which our Lord was believed to have eaten at the Last Supper.—*Cowel.*

Grain, the twenty-fourth part of a pennyweight.—*Troy Weight.*

Grain, Poisoned, Act prohibiting the use of, 26 & 27 Vict. c. 113.

Grainage, an ancient duty in London, under which the twentieth part of salt imported by aliens was taken.

Grammar schools, endowed schools founded (many of them by King Edward the Sixth) for the purpose of teaching Latin and Greek, or either of them, and in which, except under the orders of a Court of Equity, under 3 & 4 Vict. c. 77, the teaching of one or both of these languages, in accordance with the terms of the foundation, cannot be dispensed with. They are, however, subject to the control of the Charity Commissioners under the Endowed Schools Act. See ENDOWED SCHOOLS.

Grammatica falsa non vitiat chartam. 9 Co. 48.—(False grammar does not vitiate a deed.)

Granatarius, an officer who kept the corn-chamber in a religious house.

Grand assize, a peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. IV. c. 42, s. 13.

Grand cape. See CAPE.

Grand Costumier of Normandy, an ancient book, of great authority, containing the ducal customs of Normandy, probably compiled since the time of Richard I.—*Hale's Hist. Com. Law*, c. vi.

Grand distress, Writ of, formerly issued in the real action of *quare impedit*, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance. It is no longer used, 23 & 24 Vict. c. 126, s. 26 having abolished the action of *quare impedit*, and substituted for it the procedure in an ordinary action.

Grand jury, an inquisition composed of not less than twelve nor more than twenty-three good and lawful men of a county, returned by the sheriff to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery, who inquire, present, do and execute all those things which, on the part of our lady the Queen, shall then and there be commanded them. Grand jurymen at the Assize Courts ought to be freeholders; but to what amount is uncertain.—2 *Hale P. C.* 154.

The grand jury are previously instructed in the articles of their inquiry by a charge from the judge. They then withdraw to sit, and receive indictments, which are preferred in the name of the Queen, but at the suit of any private prosecutor, and they are only to hear evidence on the part of the prosecution: for the finding of an indictment is only in the nature of an inquiry or accusation, afterwards to be tried; and the grand jury only inquire upon their oaths whether there be sufficient cause to call upon the party accused to answer it.

When the grand jury have heard the evidence, if they think it a groundless accusation, they indorse upon the bill of indictment, 'not a true bill,' or 'not found'; the bill is then thrown out, and the party accused discharged. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation they indorse 'a true bill'; the indictment is then found, and the party stands indicted. A majority of the grand jury must agree, i.e., not less than twelve.—4 *Steph. Com.*

By 19 & 20 Vict. c. 54, the foreman of a grand jury is empowered to administer the oath to witnesses.

Grand larceny, stealing to above the value of twelve pence. Abolished by 7 & 8 Geo. IV. c. 29, s. 2.

Grand serjeanty, an ancient holding by military service. See TENURE.

Grange [Fr.], a farm furnished with barns, granaries, stables, and all conveniences for husbandry.—*Co. Litt.* 5 *a.*

Grangearius, a keeper of a grange or farm.

Grangia [low Lat.], a grange.—*Co. Litt.* 5 *a.*

Grant [fr. *garantir*, Fr., Junius and Skinner; but Minshew thinks *gratuito*, or perhaps *gratia*, *gratificor*, Lat.], a Common Law conveyance, operating by transmutation of possession.

This deed was originally confined to the transfer of incorporeal hereditaments and expectant estates, of which livery of seisin could not be given. But the distinction between property lying in livery and in grant, as regards the conveyance of the immediate freehold, is abolished by 8 & 9 Vict, c. 106, s. 2, which provides that all real property shall be transferable as well by grant as by livery. The operative verb is 'grant,' which, by s. 4 of the same statute, is not to imply any covenant in law in respect of any hereditaments except by force of any Act of Parliament. Railway acts provide that the operative word 'grant' in conveyances to and by the company shall imply the usual covenants for title; and under the Acts 6 Anne c. 35, s. 30, and 8 Geo. II. c. 6, s. 35, relating to the registration of deeds in the East and North Riding of Yorkshire, the verbs 'grant,' 'bargain,' and 'sell,' will amount to express covenants for title, unless especially restrained by particular words. This provision is extended by 6 Anne c. 35, s. 34, to the West Riding, where the consideration-money exceeds 50*l.*

This conveyance has become the usual mode of transferring realty. A corporation can convey by grant.

A grant of personalty is more properly termed an assignment or a bill of sale.

The Queen's grants are matters of record, and are either letters-patent or writs close.

Grant to uses. This is the common grant with uses superadded, and has become the favourite mode of transferring realty.

Grantee, he to whom any grant is made.

Grantor, he by whom a grant is made.

Grantz, grandees.—*Jacob.*

Grass-hearth, the feudal service of turning up the earth with a plough.—*Paroch. Antiq.* 496.

Grasson or **Grassum,** a fine paid upon the transfer of a copyhold estate.

Grass-week, rogation week, so called anciently in the Inns of Court and Chancery.

Gratis, without reward.

Gratis dictum, a voluntary statement.

Gratuitous bailment. See BAILMENT.

Gratuitous deeds, instruments made without binding consideration.

Gratuitous trustees, Act to amend the law in Scotland relative to the resignation, powers, and liabilities of, 24 & 25 Vict. c. 84, explained by 26 & 27 Vict. c. 115.

Grava, a little wood or grove.—*Co. Litt.* 4 *b.*

Gravamen, the substantial grievance or complaint.

Gravare et Gravatio, an accusation or impeachment.—*Leg. Ethel.* c. xix.

Gray's Inn, an Inn of Court. See INNS OF COURT.

Great cattle, all manner of beasts except sheep and yearlings.

Great charter, *Magna Charta,* which see.

Great seal [*clavis regni*, Lat.], the emblem of sovereignty, introduced by Edward the Confessor. By Act 24 of the Union between England and Scotland (5 Anne c. 8), it was provided that there should be one Great Seal for the United Kingdom, to be used for sealing writs to summon the Parliament, and for sealing treaties with foreign states, and all public acts of state which concern the United Kingdom, and in all other matters relating to England, as the Great Seal of England was then used; and that a seal in Scotland should be kept and made use of in all things relating to private rights or grants, which had usually passed the Great Seal of Scotland, and which only concern offices, grants, commissions, and private rights within Scotland. On the Union between Great Britain and Ireland no express provision was made by any of the Articles of Union as to the establishing one Great Seal for the United Kingdom; but various acts as to the summoning Parliament, etc., are required to be done under the Great Seal of Ireland; and by s. 3 of the Acts of Union,

39 & 40 Geo. III. c. 67 (*British*), and 40 Geo. III. c. 38 (*Irish*), it is enacted that the Great Seal of Ireland may, if His Majesty s all so think fit, after the Union, be used in like manner as before the Union (except where it is otherwise provided by the Articles of Union), within that part of the United Kingdom called Ireland. As to forging these seals, see FORGERY.

Great Seal (Offices) Act, 1874, 37 & 38 Vict. c. 81. This Act makes provision for the abolition of various offices connected with the Great Seal; such as those of the Messenger of the Great Seal, Clerk of the Petty Bag, Clerk of the Patents, and Pursebearer to the Lord Chancellor.

Great tithes, so called to distinguish them from tithes often granted by the name of *small* tithes to a vicar. It is difficult to define them with certainty. Thus much, however, is clear, that of the three kinds of tithes—mixed, personal, and predial—the two former are small tithes; and of the latter, it seems that tithes of corn, hay, wood, and of other herbs which are sown in large quantities, such as flax, hemp, etc., are great tithes. See *Bac. Abr. Tythes; Com. Dig. Dismes* (G).

Gree, satisfaction for an offence committed or injury done.—*Cowel.*

Greek Kalends, an expression to signify a time indefinitely remote, there being no such division of time known to the Greeks.

Green Cloth. The counting-house of the king's household was commonly called the Green Cloth in respect of the green cloth upon the table whereat the lord steward, the treasurer of the king's house, and other inferior officers sat:—(1) For daily taking the accounts for all expenses of the household. (2) For making provisions for the household, according to the laws and statutes of the realm. (3) For making of payments for the same. (4) For the good government of the king's servants. (5) For payment of the wages of the king's servants. The officers of the counting-house never held plea of anything.—4 *Inst.* 131.

Greenhew or **Greenhue**, vert in forests, etc.—*Manw.* 2, c. vi., n. 5.

Greenland Fisheries. See SEAL FISHERY ACT, 1875.

Green Silver, a feudal custom in the manor of Writtel, in Essex, where every tenant whose front door opens to Greenbury shall pay a halfpenny yearly to the lord, by the name of green silver or rent.—*Cowel.*

Greenwax, estreats delivered to a sheriff out of the Exchequer, under the seal of the Court, which was impressed upon green wax, to be levied.—7 *Hen. IV.* c. 3.

Greenwich Hospital. See 7 & 8 Wm. III. c. 21; 10 Geo. IV. c. 26; 8 & 9 Vict. c. 22; 9 & 10 Vict. cc. 9, 10; 10 & 11 Vict. c. 54; 11 & 12 Vict c. 82; 12 & 13 Vict. c. 28; 13 & 14 Vict. cc. 24, 40; 19 & 20 Vict. c. 15; 28 & 29 Vict. c. 89; and 32 & 33 Vict. c. 44, which authorised the Admiralty to transfer invalids from Greenwich Hospital to naval hospitals or infirmaries, and to substitute pensions in lieu of maintenance in or at the expense of Greenwich Hospital. As to the application of the revenues of the Hospital see, 35 & 36 Vict. c. 67.

Gregorian Code. See CODEX GREGORIANUS.

Gregorian Epoch, the time from which the Gregorian calendar or computation dates, i.e., from the year 1582. See CALENDAR.

Grenville Act, 10 Geo. III. c. 16, by which the jurisdiction over parliamentary election petitions was transferred from the whole House of Commons to select committees. Repealed by 9 Geo. IV. c. 22, s. 1.

Gretna Green Marriage, a marriage celebrated at Gretna, in Dumfries (bordering on the county of Cumberland), in Scotland. By the law of Scotland a valid marriage may be contracted by consent alone, without any other formality. See PER VERBA DE PRÆSENTI.

When the Marriage Act, 26 Geo. II. c. 33, rendered the publication of banns (or a license) necessary in England, it became usual for persons who wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law; so a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith. But by 19 & 20 Vict. c. 96. s. 1, after 31st December, 1856, no marriage contracted in Scotland by declaration, acknowledgment, or ceremony is valid, unless one of the parties had, at the date thereof, his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage, any law, custom, or usage to the contrary notwithstanding.

Greve [fr. *gerefa*, or rather, *reve*, Sax.], a word of power or authority.—*Cowel.*

Grimgribber [fr. *grimoire*, Fr., a conjuring book in the old French romances, or perhaps the art of necromancy itself], the jargon used as a cover for legal sophistry.—*Div. of Purl.* 36, and notes.

Grith, peace, protection.—*Termes de la Ley.*

Grithbreche, breach of the peace.—*Cowel.*

Grithstole, a place of sanctuary.—*Cowel.*

Gronna, a deep pit or place where turfs are dug to burn.—*Hoved.* 438.

Groom porter, formerly an officer belonging to the royal household.—*Jacob.*

Groom of the stole [fr. στολή, Gk., a robe], an officer of the royal household, who has charge of the king's wardrobe.

Gross, absolute, entire. A thing in gross exists in its own right, and not as an appendage to another thing.

Gross weight, the whole weight of goods and merchandize, including the dust and dross, and also the chest or bag, etc., upon which tare and tret are allowed.

Grosse bois, timber.—*Cowel.*

Grossment enceinte, pregnancy in its later stages.

Grotius, the greatest European writer on International Law. He was born at Delft, in Holland, in 1585, A.D. His greatest work is 'De Jure Pacis et Belli.'

Groundage, a custom or tribute paid for the standing of shipping in port.—*Jacob.*

Ground-annual, a ground rent.

Ground Game Act, 1880, 43 & 44 Vict. c. 41, giving to occupiers concurrent rights with owners to kill hares and rabbits. See HARES.

Ground-rent. The rent payable for land let on a building lease on which the lessee erects buildings, which at the termination of the lease, together with the land, become the property of the lessor.

Ground-writ. Before the C. L. P. Act, 1852, a *ca. sa.* or *fi. fa.* could not be issued into a country different from that in which the venue in the action was laid, without first issuing a writ called a *ground-writ* into the latter country, and then another writ, which was called a *testatum* writ, into the former. The 121st section of that Act abolished this useless process. See EXECUTION.

Grouse. See GAME.

Growth halfpenny, a rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle.—*Clayton's Rep.* 92.

Gruarii, the principal officers of a forest.

Guarantee, he to whom a guaranty is made; also and more commonly the guaranty itself. See GUARANTY.

Guarantee by Companies Act, 1867, 30 & 31 Vict. c. 108, repealed, and new provisions substituted, by the Government Officers Security Act, 1875 (38 & 39 Vict. c. 64).

Guarantor, he who makes a guaranty.

Guaranty, or **Guarantee**, a promise to a person to be answerable for the payment of a debt or the performance of a duty by another, in case he should fail to perform his engagement. An offer to guarantee until it be accepted is not binding. At the Common Law a guarantee need not have been in writing, but the Statute of Frauds, 29 Car. II. c. 3, s. 4, enacts that 'No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the parties *to be charged by the contract*, or some other *persons thereunto by him lawfully authorised.*' In case of guarantees, great inconvenience had resulted from the construction put upon the above section, viz., that the consideration for the promise of the guarantor must appear upon the written instrument. To remedy this the Mercantile Law Amendment Act, 1856, 19 & 20 Vict. c. 97, was passed, by which no promise to answer for the debt, etc., of another, is to be deemed invalid to support an action, by reason that the consideration does not appear in writing (s. 3). By s. 4 of the same Act, no promise to answer for the debt, etc., of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, etc., of a firm consisting of two or more, or of one trading under the name of a firm, is binding after a change in any of the firm, or in the person trading under the name of a firm; unless the attention of the parties to that effect appear expressly or by necessary implication from the nature of the firm or otherwise. Consult *De Colyar on Guarantees.*

As to guarantees of persons holding situations of trust under government by companies, societies, or associations, see Government Officers Security Act, 1875, 38 & 39 Vict. c. 64, repealing 30 & 31 Vict. c. 108.

Guardage, state of wardship.

Guardian, or **Warden of the Cinque Ports**, a magistrate who has the jurisdiction of the ports or havens, which are called the *Cinque Ports.* This office was first created amongst us, in imitation of the Roman policy, to strengthen the sea-coasts against enemies, etc.—*Camd. Br.* 238.

Guardian de l'église, a churchwarden.

Guardian de l'estemary, the warden of the stannaries or mines in Cornwall, etc.

Guardian of the peace, a warden or conservator of the peace.

Guardian of the spiritualities, the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

Guardian of the temporalities, the person to whose custody a vacant see or abbey was committed by the Crown.

Guardians of the poor. First constituted by 22 Geo. III. c. 83 (Gilbert's Act), repealed by the Statute Law Revision Act, 1871, are elected in 'unions' or parishes, as the case may be, by ratepayers and owners, within 40

days after the 25th March in every year, to serve for a year, under the Poor Law Amendment Act, 1834, 4 & 5 Wm. IV. c. 76, ss. 38 *et seq.* as amended by s. 17 of 7 & 8 Vict. c. 101, and other Acts, and, 'The Election of Guardians Consolidated Order, 1877.' Each voter has from one to six votes, in proportion to the property qualifying him to vote.

County justices of the peace are guardians *ex officio*.

Guardianship, or temporary parentage, arises at the death of the parents of an infant under twenty-one years of age, and unmarried; the law of this relationship has been materially altered in favour of mothers by the Guardianship of Infants' Act, 1886, 49 & 50 Vict. c. 27.

In modern times, guardians may be said to be of six kinds:—

(1) *Testamentary.*—By 12 Car. II. c. 24, s 8, *the father*, and by s. 3 of the act of 1886, *the mother*, may by deed or will appoint a guardian or guardians.

(2) *Maternal.*—By s. 2 of the act of 1886, on the death of the father, the mother, if surviving, becomes guardian, either alone when no guardian is appointed by the father, or jointly with any guardian appointed by the father, or by the High or County Court if it shall think fit.

(3) *Customary.*—This guardianship is entirely local, and depends altogether upon the law of the particular place where it exists. It is found in copyhold manors, ancient corporations, and gavelkind lands. The father's authority of appointing a guardian, under the 12 Car. II. c. 24, does not extend to copyhold property.

(4) *Ad litem.*—Every court in which an infant as one of the suitors has power to appoint a guardian for the purpose of protecting such infant's interest in the proceedings instituted. See 2 *Chit. Arch. Prac.*, 14th ed., 1138, and Daniel's *Ch. Pr.* By the Rules of the Supreme Court, provision is made for the appointment of such a guardian in all cases where an infant or lunatic not so found by inquisition is defendant, and has not appeared to a writ duly served; and that infants may defend any action by a guardian appointed for that purpose.

(5) *By appointment of Chancery.*—This Court had power to appoint a guardian, to protect the interests of an infant-ward, where there was no guardian already. The guardian was usually of the same religion as the infants' parents, solvent, and of a moral, capable, and humane character, residing in England. The wardship of infants and the care of infants' estates is continued to the Chancery Division of the High Court of Justice by the Judicature Act, 1873, s. 34.

(6) *Guardian in tort, or by intrusion* (*tutor alienus*).—This is an indirect guardianship, arising from a person intruding into an infant's property; if he receive the profits belonging to the infant he must account for them in Chancery, being regarded as the infant's trustee.

Guastald, one who had the custody of the royal mansions.

Gubernator [Lat.], a pilot or steersman.

Guest-taker, an agistor; one who took cattle in to feed in the royal forests.—*Cowel.*

Guidage, a reward for safe conduct through a strange land or unknown country.—*Cowel.*

Guidon de la Mer, a treatise on maritime law, written in Rouen in 1671.

Guild [fr. *gildan*, Sax., to pay or contribute], a company, fraternity, or corporation, associated for some commercial purpose.

Guildhall, the chief hall of a city or borough-town, for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city or town, and to administer summary justice. See TOWN HALL.

Guildhall Sittings. The sittings held in the Guildhall of the city of London for city of London causes. See ROYAL COURTS OF JUSTICE.

Guildrents. See GILDRENT; GULTWIT.

Guilt (v. n.) [fr. *wiglian, bewiglian, gewiglian*, A.-S., to conjure, to divine, and hence to practise cheat, imposture, and enchantment; the past participle of *gewiglian* is *gewigled*, guiled, guilt.—*Tooke.* Others say it is derived from *gildan*, A.-S., to pay a tax, and originally signified the fine or mulct paid for an offence, and afterwards the offence itself], sin, wickedness, crime, criminality.

Guilty. Having committed a crime or tort; the word used by a prisoner in pleading to an indictment when he confesses the crime of which he is charged, and by the jury in convicting.

Guinea, a coin formerly issued by the mint, but all these coins were called in temp. Wm. IV.; the word now means only the sum of 1*l.* 1*s.*, in which denomination the fees of counsel and physicians are always given.

Gule of August, the first day of that month.—*F. N. B.* 62; *Plow.* 316.

Gules, the heraldic name of the colour usually called red. The word is derived from the Arabic word *gule*, a rose, and was probably introduced by the Crusaders. Gules is denoted in engravings by numerous perpendicular lines. Heralds who blazoned by planets and jewels called it *Mars*, and *ruby*.

Gultwit, or **Guiltwit**, amends for a trespass.

Gun Barrels. As to proof of, see 31 & 32 Vict. c. 113, repealing 18 & 19 Vict. c. 48.

Gun-cotton. As to the making, sale, etc., of gun-cotton, see the Explosives Act, 38 Vict. c. 17.

Gun License. A duty of 10*s.* for every such license is imposed by 33 & 34 Vict. c. 57.

Gunmakers' Company. See GUN BARRELS.

Gunge, a granary, a depôt, chiefly of grain for sale. Wholesale markets held on particular days. Commercial depôts.—*Indian.*

Gunpowder. As to the making, keeping, sale, and carriage of gunpowder, see 38 Vict. c. 17. This Act repeals the 23 & 24 Vict. c. 139; 24 & 25 Vict. c. 130; and 25 & 26 Vict. c. 98. As to the exportation of gunpowder, see also Customs Consolidation Act, 1876.

Gurgites [Lat.], wears.—*Jacob.*

Guti and **Gotti**, Goths, Jutæ or Getæ, who left Germany and came to inhabit this island.— *Leg. Edw. Conf.* c. 35.

Gwabr merched, a payment or fine made to the lords of some manors, upon their tenants' daughters marrying or committing incontinency.—*Jacob.* See MERCHETA MULIERUM.

Gwalstow, a place of execution.—*Jacob.*

Gwayf, that which has been stolen and afterwards dropped in the highway for fear of a discovery.—*Cowel.*

Gylput, the name of a court which was held every three weeks in the liberty or hundred of Pathbew in Warwick.—*Jacob.*

Gynarcy, or **Gynæcocracy**, government by a woman; a state in which women are legally capable of the supreme command, e.g., in Great Britain and Spain.

Gypsies. The first of the laws against gypsies, 22 Hen. VIII. c. 10, describes this people, who were then new comers in this country, as 'outlandish persons calling themselves Egyptians, using no craft or feat of merchandise, who have come into this realm and go from shire to shire and place to place in great company, and used great, subtle, and crafty means to deceive the people, bearing them in hand, that they by palmistry could tell men's and women's fortunes; and so many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies.' It was enacted, that if any such persons came within the realm, they should forfeit all their goods and chattels, and should leave the kingdom within fifteen days after command so to do, upon pain of imprisonment.—4 *Reeves*, c. xxx., 420.

Both this Act and the still more severe 1 & 2 P. & M. c. 4, have been repealed, as Acts not in use, by 19 & 20 Vict. c. 64. Fortune-tellers are, however, punishable under the Vagrant Act, 5 Geo. IV. c. 83, and, *eo nomine*, any gipsy encamping on a highway by 5 & 6 Wm. IV. c. 50, s. 72.

Gyves [fr. *gevyn*, Wel.], fetters or shackles for the legs.

H.

Habeas corpora juratorum (*that you have the bodies of the jurors*), a process which issued out of the Court of Common Pleas, commanding the sheriff to summon a jury. The practice was similar to the *distringas* from the Queen's Bench and Exchequer for the same purpose. Abolished by C. L. P. Act, 1852, s. 104.

Habeas Corpus Act, the 31 Car. II. c. 2, providing the great remedy for the violation of personal liberty by the writ of *habeas corpus ad subjiciendum*, which see below.

Habeas corpus ad faciendum et recipiendum (*that you have the body to do and receive*), a common law writ which issues out of the Supreme Court when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court. It commands the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, to do and receive whatever the Queen's Court shall consider in that behalf. It is also called a *habeas corpus cum causâ*, which see; and consult 2 *Chit. Arch. Prac.*, 14th ed., 1555.

Habeas corpus ad prosequendum (*that you have the body to prosecute*), a writ that issues when it is necessary to remove a prisoner, in order that he may be tried in the proper jurisdiction.—3 *Bl. Com.* 130.

Habeas corpus ad respondendum (*that you have the body to answer*), a writ which formerly issued when one had a cause of action against another, who was confined by the process of some inferior court, in order to remove the prisoner and charge him with the new cause of action in the court above.—*Ibid.* No longer used.

Habeas corpus ad satisfaciendum (*that you have the body to satisfy*). When a plaintiff had obtained judgment in one of the superior Courts against a defendant, who was in the prison of an inferior court at the suit of another, he might, by this writ, bring up the prisoner to the superior court in order to charge him in execution.—*Ibid.* Rendered unnecessary by C. L. P. Act, 1852, s. 127.

Habeas corpus ad subjiciendum (*that you have the body to answer*). This, the most

celebrated prerogative writ in the English law, is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the judge or court shall consider in that behalf. The writ is applied for either by motion to a court or application to a judge, supported by an affidavit of the facts. (See Crown Office Rules, 1886, 236-45; *Chit. Stat. for* 1886, p. 36.) If a probable ground be shown that the party is imprisoned without a cause, and has a right to be delivered, this writ ought of right to be granted to every man committed or detained in prison or otherwise restrained, though by command of the sovereign, the Privy Council, or any other power. Therefore there is an absolute necessity of expressing upon every commitment the reason for which it is made, that a court upon a *habeas corpus* may examine, and, according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner.

The great 'Habeas Corpus Act,' 31 Car. II. c. 2, did not newly establish the remedy for unjust imprisonment by writ of *habeas corpus*, but reciting the shifts of gaolers and others to avoid their yielding obedience to such writ 'contrary to their duty and the known laws of the land' (as laid down in Magna Charta and other statutes), made the writ more actively remedial by imposing penalties for disobedience to the writ, and otherwise.

This statute extends only to the case of commitments for criminal charges, all other cases of unjust imprisonment being left to the *habeas corpus* at Common Law, now regulated by 56 Geo. III. c. 100, under which, where any person is restrained of his liberty (otherwise than for some criminal or supposed criminal matter, or for debt, or by process in any civil suit), any judge of the Queen's Bench Division of the High Court 'shall, upon probable and reasonable ground for such complaint, award in vacation a writ of *habeas corpus*,' direct to the person in whose custody the party is, returnable immediately.

Besides the efficacy of the writ of *habeas corpus* in liberating the subject from illegal confinement in a public prison, it also extends its influence to remove every unlawful restraint of personal freedom in private life, availing, for instance, to restore children to the lawful custody of their father, unless he is leading a vicious life (see *re Goldsworthy*, 2 *Q. B. D.* 75).

By 25 & 26 Vict. c. 20, no writ of *habeas corpus* shall issue out of any of the Courts in England into any colony or foreign dominion of the Crown where Her Majesty has a lawfully established court of justice, having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or dominion. See 30 & 31 Vict. c. 35, s. 10, as to bringing up persons indicted, and who are in gaol for some other offence.

The Habeas Corpus Act has been occasionally suspended in times of great public danger for a limited time, so as to allow the Government to arrest persons on mere suspicion, and to detain them without trial. See, e.g., 57 Geo. III. cc. 3 and 55, and as to Ireland 29 Vict. c. 1, and 44 Vict. c. 4.

Habeas corpus ad testificandum (*that you have the body to testify*), a writ to bring a witness into court, when he is in custody at the time of a trial. This is provided for by 43 Geo. III. c. 140, and 44 Geo. III. c. 102. He must be a material witness, and willing to attend. The Court will not grant this writ to bring up a prisoner of war; an application must be made to the Secretary of State. Under the 16 & 17 Vict. c. 30, s. 9, the Secretary of State may issue a warrant or order for bringing up witnesses in gaol (where not in gaol under civil process); and by 19 & 20 Vict. c. 108, s. 31, a similar power of compelling the attendance of a person in custody, in order that he may be examined, is given to a judge of a county court.

Habeas corpus cum causâ (*that you have the body with the cause*), a writ which a defendant may have to remove himself from one prison to another; also a writ to remove a cause from an inferior court into a superior court, when the defendant is in custody in the court below.—*Chit. Arch. Prac.* As to *habeas corpus* in Chancery, see *Daniell's Ch. Pr.*

Habemus confitentem reum. We have an accused person who confesses the whole charge.

Habendum of a deed, that part of a conveyance, etc., which determines the quantity of interest conveyed; but should the quantity be expressed in the premises, then the *habendum* may lessen, enlarge, explain, or qualify, but not contradict, or be repugnant to the estate granted in the premises. See DEED.

Habentia, riches.—*Mon. Angl.* t. 1, 100.

Habere facias possessionem (*that you cause to have possession*), a writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. If the first writ be not executed, an *alias*, etc., may be sued out. The officer, if necessary, may

break open outer doors, in order to give possession, or he may take the *posse comitatus* with him if he fear violence.—1 *Chit. Arch. Prac.* By R. S. C. 1883, Ord. XLVII., a judgment that a party recover possession of land may be enforced by writ of possession, and that where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall be entitled to sue out the writ on filing an affidavit showing service of the judgment and disobedience thereto.

Habere facias seisinam (*that you cause to have possession*), a writ addressed to the sheriff to give seisin of a freehold estate recovered by *ejectione firmæ* or other action.—*O. N. B.* 154.

Habere facias visum (*that you cause to have view*), a writ that lay in divers cases in real actions, as in formedon, etc., where a view was required to be taken of the lands in controversy. See FORMEDON.

Habergeon, a diminutive of hauberk, a short coat of mail without sleeves.—*Blount.*

Haberjects, a cloth of a mixed colour.—*Magna Charta*, c. 26.

Habit and repute. By the law of Scotland marriage may be established by habit and repute where the parties cohabit and are at the same time held and reputed as man and wife.—*Bell's Scotch Law Dict.*

Habitatio. The nature of this personal servitude is not obvious. Some jurists confound it with the right to use a house; but Justinian declares it to be quite distinct, both from the *jus utendi* and the *jus fruendi*. For whilst the *jus utendi* is one and entire, the *habitatio* is a series of rights arising from day to day, so that in bequeathing it you make a separate bequest, in fact, for each day; hence, also, it was not extinguished by non-user. Justinian added the further distinction, that it might be let.—*Cum. C. L.* 95, and *Sand. Just.*, 7th ed., 131.

Habitual Criminals Act, 32 & 33 Vict. c. 99. By this Act power was given to apprehend on suspicion convicted persons holding license under the Penal Servitude Acts, 1853, 1857, and 1864. The Act was repealed and replaced by the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112. See PREVENTION OF CRIMES.

Habitual Drunkard. Defined by the Habitual Drunkards Act, 1879, 42 & 43 Vict. c. 19, made perpetual by the Inebriates Act, 1888, which authorises confinement in a retreat, upon the party's own application, as 'a person, who, not being amenable to any jurisdiction in lunacy is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself, or herself, or others, or incapable of managing himself or herself, or his or her affairs.' See DRUNKENNESS.

Hable, a seaport town.—27 *Hen. VI.* c. 3.

Hackney coaches. The provisions relating to these vehicles in large towns are contained in the Town Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 37 *et seq*, incorporated by the Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 171, and in the metropolis in the 1 & 2 Wm. IV. c. 22, amended by 6 & 7 Vict. c. 86, which repeals all previous acts on the subject; 13 & 14 Vict. c. 7; 16 & 17 Vict. cc. 33, 127; 23 & 24 Vict. c. 113; 29 & 30 Vict. c. 64; 30 & 31 Vict. c. 134, s. 17; and 32 & 33 Vict. c. 115.

Hadbote, a recompense for an affront offered to a priest.—*Cowel.*

Haderunga [fr. *had*, Sax., person, and *arung*, honoured], respect of persons; partiality.—*Cowel.*

Hadgonel, a tax or mulct.—*Jacob.*

Hæreda [Goth.], court-leet.

Hærede abducto, an ancient writ that lay for the lord, who having by right the wardship of his tenant under age, could not obtain his person, the same being carried away by another person.—*Old N. B.* 93.

Hærede deliberando alteri qui habet custodium terræ, an ancient writ, directed to the sheriff to require one that had the body of an heir being in ward, to deliver him to the person whose ward he was by reason of his land. —*Reg. Orig.* 161.

Hærede rapto, an ancient writ that lay for the ravishment of the lord's ward.—*Reg. Orig.* 163.

Hæredes proximi, heirs begotten; children.

Hæredes remotiores, heirs not begotten, as grandchildren, great grandchildren, etc., descending in a direct line *in infinitum*.

Hæredipeta, the next heir to lands.

Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri. Co. Litt. 9.—(An inheritance is either corporeal or incorporeal; corporeal, is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.) As to the division of the *hæreditas* in the Civil Law, see *Sand. Just.*, 7th ed., 264 *et seq.* Hæreditas, *sensu objectivo*, comprehends the entire state left by a deceased person or *complexus bonorum defuncti; sensu subjectivo*, it is the *jus hæreditarium*, or right attaching thereupon.

Hæreditas est successio in universum jus quod defunctus habuerat. Co. Litt. 237.—(Inheritance is the succession to every right which the deceased had.)

Hæreditas nunquam ascendit. Glan. 1, 7. c. i.—(Inheritance never ascends.) This feudal maxim was exploded by 3 & 4 Wm. IV. c. 106, s. 6. See INHERITANCE.

Hæreditas, n'est pas tant solement entendue lou home ad terres ou tenements per discent d'enharitage, mes auxi chescun fee simple ou tail que home ad per son purchase puit estre dit enheritance, par ceo que ses heirs luy purront enheriter. Co. Litt. 26.—(Inheritance does not only comprehend all the lands and tenements which a man has by descent from his ancestors, but also every fee-simple or fee-tail which he has by purchase is called inheritance, because his heir can inherit it from him.)

Hæreditas jacens. An estate in Scotland is said to be *in hæreditate jacente* when, after the ancestor's death, no title to it has been made up in the person of his heir.—*Bell's Dict.*

Hæres est aut jure proprietatis aut jure representationis. 3 Rep. 40.—(An heir is such by right either of property or of representation.)

Hæres est nomen juris, filius est nomen naturæ. Bac. M. Reg. 11.—('Heir' is a name of right, 'Son' is the name of nature.)

Hæres factus, an heir appointed; a devisee.

Hæres hæredis mei est meus hæres.—(The heir of my heir is my heir.)

Hæres legitimus est quem nuptiæ demonstrant. Co. Litt. 7 *b.*—(He is the lawful heir whom wedlock declares.)

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis. Moore, 348.—(An heir under twenty-one years of age is not answerable, except in the matter of dower.)

Hæres natus, an heir born; an heir by descent.

Hæres non tenetur in Angliâ ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus præterquam debita regis tantum. Co. Litt. 386.—(In England the heir is not bound to pay his ancestor's debts unless he be bound to it by the ancestor, except debts due to the king.)

But now, by 3 & 4 Wm. IV. c. 104, he is liable.

Hæretico comburendo (De), an ancient writ against a heretic, who having been convicted of heresy by the bishop, abjured it, and afterwards fell into the same again, or some other, and was thereupon delivered over to the secular power in order that he might be burnt.—*F. N. B.* 269.

Hafne, a haven or port.—*Cowel.*

Haga, a house in a city or borough.—*Scott.*

Hagia, a hedge.—*Mon. Angl.* tom. 2, p. 273.

Haia, a park enclosed.—*Cowel.*

Hailworkfolk (i.e., holywork folk), those who formerly held lands by the service of defending or repairing a church or monument.—*Bailey.*

Hainault, Forest of. As to its disafforesting, see 14 & 15 Vict. c. 43; and as to the allotment of commons, 21 & 22 Vict. c. 37.

Haketon, a military coat of defence.

Hale, Sir M., author of a work on the Pleas of the Crown. See PLEAS OF THE CROWN.

Half-blood, one not born of the same father *and* mother, who can now inherit by virtue of 3 & 4 Wm. IV. c. 106.

Half-brother, a brother by the father or mother's side only.

Half-endeal, a moiety, or half of a thing.

Half-mark, a noble, or 6*s.* 8*d.* in money.

Half-seal, that which was used in the Chancery for sealing of commissions to delegates, upon any Appeal to the Court of Delegates either in ecclesiastical or marine causes. Abolished.

Half-Timer. A child who, by the operation of the Factory and Education Acts, is employed for less than the full time in a factory or workshop, in order that he may attend some 'recognized efficient school.' See Factory and Workshop Act, 1878, s. 23; Elementary Education Act, 1876 s., 11.

Half-tongue, a jury *de medietate linguæ,* empannelled to try foreigners. Since the 33 & 34 Vict. c. 14, foreigners are no longer entitled to this privilege.

Half-a-year, 182 days, and not six lunar months.—*Cro. Jac.* 166.

Halimass, the feast of All Saints, on the 1st of November, one of the cross quarters of the year, was computed from Halimass to Candlemass.

Halke, a hole.—*Jacob.*

Hallage, tolls paid for goods or merchandise vended in a hall.—6 *Rep.* 62.

Hallamshire, a part of the county of York, anciently so called, in which the town of Sheffield stands. See *Whalley's Hist. of Hallamshire.* Trade Marks Registration Act, 1875, 38 & 39 Vict. c. 91, s. 9.

Hallmote, or **Hallimote,** a court among the Saxons answering to our court-baron; also the court held by each of the city companies in London.—*Cowel.*

Halymote, a holy or ecclesiastical court.

Halywercfolk. See HAILWORKFOLK.

Ham, a place of dwelling; a home close; a little narrow meadow.—*Blount.*

Hambling, or **Hammelling of dogs,** expeditation.—*Manwood.*

Hamesoken, the offence of violently invading a man's house.—*Cowel.*

Hamfare, breach of the peace in a house.—*Cowel.*

Hamlet, Hemel, Hampsel, a vill or little village.—*Cowel.*

Hamma, a close joining to a house; a croft; a little meadow.—*Cowel.*

Hamsoca, or **Hamsoken**. See HAMESOKEN.

Hanaper [fr. *hadaperium*, low Lat., a hamper], a treasury, answering to our modern term *exchequer*.

Hanaper-office, an office belonging to the common law jurisdiction of the Court of Chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, *in hanaperio*. —5 & 6 *Vict.* c. 103.

Hand-borrow, a surety; a manual pledge.

Hand-fasting, betrothment.

Hand-grith, peace or protection given by the king with his own hand.

Hand-habend, a thief caught in the very act, having the thing stolen in his hand.

Hand-sale, a custom among the northern nations of shaking hands to bind a bargain or contract.

Handsel, earnest-money.

Handwriting, comparison of, see 17 & 18 Vict. c. 125; 28 & 29 Vict. c. 18.

Hanging in chains. In atrocious cases it was at one time usual for the Court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice abolished by 4 & 5 Wm. IV. c. 26.

Hangwite, or **Hangwit**, a liberty to be quit of a felon or thief hanged without judgment, or escaped out of custody.—*Rastal.*

Hanig, customary labour.

Hansgrave, the chief of a company; the head man of a corporation.

Hantelode, an arrest.—*Jacob.*

Hap, *to*, to catch.—*Cowel.*

Hagne, a little hand-gun.—33 *Hen. VIII.* c. 6.

Hagnebut, a hand-gun of a larger description than the hagne.—2 & 3 *Edw. VI.* c. 14; 4 & 5 *P. & M.* c. 2.

Harbinger, an officer of the royal household.

Harbours. See PORTS. As to the improvement and management of harbours, docks, and piers, see 10 Vict. c. 27; 16 & 17 Vict. c. 107; 25 & 26 Vict. cc. 19, 69; 24 & 25 Vict. cc. 45, 47, 80; 26 & 27 Vict. cc. 30, 31; and 28 & 29 Vict. c. 100.

Hard labour, a punishment said to have been introduced by 5 Anne c. 6. It may be added in most cases to the sentence of imprisonment, and the mode of working out the sentence is regulated by the 34th and 35th regulations of the Prison Act, 1865, as amended by s. 37 of the Prison Act, 1877.

Hare, a beast of warren. Is 'game' within the Game Acts and Game Certificate Acts (see GAME), but by 11 & 12 Vict. c. 29, the occupier and the owner may kill hares without a certificate, and by the Ground Game Act, 1880, 43 & 44 Vict. c. 47, the occupier has, 'incident to and inseparable from his occupation,' a concurrent right with any other person to kill hares and rabbits on the land occupied. The Hares Preservation (Ireland) Act, 1879, 42 & 43 Vict. c. 23, following 27 Geo. III. c. 35, an Act of the Irish Parliament repealed in the same year, makes the period between 20th of April and 12th of August a close time for hares in Ireland, but there is no close time for hares in England, although a bill to establish such close time has been introduced.

Harness, all warlike instruments (*Hoved.* 724); also the tackle or furniture of a ship.

Haro, Harron, an outcry after felons and malefactors.—*Jacob.*

Hasp and staple, the old form of the entry of an heir into premises held by burgage tenure in Scotland.—See *Bell's Dict.*

Hat-money, a small duty paid to the captain and mariners of a ship, called *primage*.

Haugh, or **Howgh**, a green plot in a valley.

Haur, hatred.—*Leg. W.* 1, c. 16.

Hauthoner, a man armed with a coat of mail.—*Jacob.*

Havens [fr. *havn*, Dan.; *haven*, Dut., fr. *hafen*, A.-S., fr. *habban*, to have or hold], that which holds or contains ships, a port or harbour. To secure the marine revenue, the sovereign has the prerogative of appointing ports and havens for persons and merchandise to pass into and out of the realm. By the feudal laws all navigable rivers and havens were computed among the *regalia*, and subject to the sovereign of the state. The English sovereign is lord of the whole shore, and guardian of the ports and havens, which are the inlets and gates of the realm. Legal ports were, at first, assigned by the Crown; to each of them a court of portmote is incident, the jurisdiction of which must flow from the royal authority; the great ports of the sea are referred to as well known and established by Hen. IV. c. 20, which prohibits the landing elsewhere under pain of confiscation; and the 1 Eliz. c. 11 recites that the franchise of landing and discharging had been frequently granted by the Crown. But though the sovereign had a power of granting the franchise of havens and ports, yet he had not a power of resumption, or of narrowing and confining their limits when once established; but any person had a right to load or discharge his merchandise in any part of the haven; whereby

the revenue of the customs was much impaired and diminished, by fraudulent landings in obscure and private corners. This occasioned the 1 Eliz. c. 11; and 13 & 14 Car. II. c. 11, s. 14 (both abolished by 6 Geo. IV. c. 105), which enabled the Crown by commission to ascertain the limits of all ports, and to assign proper wharves and quays in each port of the exclusive landing and loading of merchandise. And by 46 Geo. III. c. 153, no pier, quay, wharf, jetty, breast, or embankment can be erected in or near to any public harbour without one month's notice to the Admiralty; saving the privileges of the city of London.—2 *Steph. Com.* See 16 & 17 Vict. c. 107; and HARBOURS.

Haw, a small parcel of land so called in Kent; a house.—*Co. Litt.* 5.

Haward. See HAYWARD.

Hawberk, or **Hawbert**, he who held land in France, by finding a coat or shirt of mail, with which he was to be ready when called upon. See FIEF D'HAUBERT.

Hawgh, a valley.—*Co. Litt.* 5 *b.*

Hawkers and **Pedlars**, persons who carry their goods from place to place for sale. The 50 Geo. III. c. 41, imposed a license duty on them, and made various provisions in regard to their trade. After many amending Acts (see 52 Geo. III. c. 108, e.g., 27 Vict. c. 18, sched. B., 22 & 23 Vict. c. 36) the Consolidating Hawkers Act, 1888, 52 & 53 Vict. c. 33, regulates the business of hawkers, somewhat artificially defining, for the purposes of the Act, a hawker as a person who travels about *with a horse or other beast bearing or drawing burden*, the Pedlars Act, 1871, 34 & 35 Vict. c. 96, for regulating the business of pedlars, having already defined a pedlar for the purposes of that Act as a person travelling about *without a horse*, etc.

Hay, a hedge or enclosure; a net to take game.—*Jacob.*

Hay-bote, a liberty to take thorns and other wood to make and repair hedges, gates, fences, etc., either by tenant for life or years; also wood for the making of rakes and forks. See BOTE.

Hayward, one who keeps a common herd of cattle of a town, and the reason of his being so called may be, because one part of his office is to see that they neither break nor cross the hedges of enclosed lands; or because he keeps the grass from hurt or destruction. He is an officer appointed in the lord's court, to look to the fields and impound cattle trespassing thereon; to see that no pound breaches be made, and if any be, to present them to the leet, etc.—*Kitch.* 46; *Scriven on Copyholds*, p. 504, 5th ed.

Hazard, an unlawful game by 18 Geo. II. c. 34.

Headborough, the head of a borough; a constable. See CONSTABLE.

Head-courts, certain tribunals in Scotland, abolished by 20 Geo. II. c. 50.—*Ersk.* i. 4, 5.

Head-land, the upper part of land left for the turning of the plough, whence the *head way*.—*Paroch. Antiq.* 587.

Head-pence, an exaction of a certain sum collected by the Sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the Crown. Abolished by 23 Hen. VI. c. 7.

Head-silver, dues paid to lords of leets; also a fine of 40*l.* which the Sheriff of Northumberland exacted of the inhabitants twice in seven years.

Heafodweard, one of the services to be rendered by a thane, but in what it consisted seems uncertain.—*Anc. Inst. Eng.*

Healfang, or **Halsfang** [fr. *hals*, Sax., neck, and *fang*, to seize], the pillory; also a pecuniary mulct, to commute for standing in the pillory.

Healgemote, a court-baron; an ecclesiastical court.

Health. The principal offences against the public health are, those against the Quarantine, Adulteration, Vaccination, and Public Health Acts. See PUBLIC HEALTH.

Hearing, the trial of an action in the Chancery Division of the High Court by a judge without a jury; an investigation of a controversy. See TRIAL.

Hearsay evidence. It is a general principle in the law of evidence that if any fact is to be proved against any one, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth; and the reason of the rule is, that the person who is to be affected by the evidence ought to have an opportunity of interrogating the witness as to his means of knowledge, and concerning all the particulars of his statement. Hearsay evidence (whether spoken or written) of a fact, therefore, is not admissible. And this rule is extended to affidavits, which, except on interlocutory motions, when statements as to belief with the grounds thereof are admissible, must be confined to facts which the deponent can prove of his own knowledge (R. S. C. 1883, Ord. XXVIII., r. 3).

The exceptions to the general rule as to the inadmissibility of hearsay evidence are the following: (1) dying declarations; (2) hearsay in questions of pedigree: (3) hearsay on questions of public right, customs, boundaries, etc; (4) admissibility of old leases, rent-rolls, surveys, etc; (5) admissibility of declarations against interest; (6) admissibility of

rectors' and vicars' books.—Consult *Roscoe and Taylor on Evid.*, s. 507 *et seq.*

Hearth-money, a tax levied by 14 Car. II. c. 10. It was productive of great discontent, and was abolished by 1 W. & M. st. 1, c. 10.

Hebbermen, were fishermen or poachers below London Bridge, who fished for whitings, flounders, smelts, etc., commonly at ebbing water. Punishable by 4 Hen. VII. c. 15.

Hebborthef, the privilege of claiming the goods and trial of a thief within a certain liberty.

Hebbing-wears, a device for catching fish in ebbing waters.—23 *Hen. VIII.* c. 5.

Hebdomad, a week; a space of seven days.

Hebdomadius, a week's man, canon, or prebendary in a cathedral church, who has the care of the choir and the officers belonging to it, for his own week.—*Red Episc. Hereford MSS.*

Hecagium, rent paid to a lord of the fee for a liberty to use the engines called hecks.

Heck, an engine to take fish in the river Ouse.—23 *Hen. VIII.* c. 18.

Heda, a small haven, wharf, or landing-place.—*Old Records.*

Hedagium, toll or customary dues at the hithe, or wharf, for landing goods, etc., from which exemption was granted by the Crown to some particular persons and societies.

Hedge-bote, materials to make hedges, which a lessee for years, etc., may of common right take from the land leased. See Bote.

Hedge-priest, a vagabond priest in olden time.

Heir [fr. *heire*, Old Fr.; *hæres*, Lat.], a person who succeeds by descent to an estate of inheritance. It is *nomen collectivum*, and extends to all heirs; and under heirs, the heirs of heirs, are comprehended *in infinitum*.

The different kinds of heirs may be thus classed and defined:—

(α) Heir *apparent*. He whose right of inheritance is indefeasible, provided he outlive the ancestor: as the eldest son, who must by the course of the common law be heir to his father on his death.—3 *Prest. Abst.* 5.

(β) Heir by *custom*. He who is heir by a particular and local custom, as in borough-English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir. —*Co. Litt.* 140.

(γ) Heir by *devise*, or *hæres factus*. He who is made, by will, the testator's heir or devisee, and has no other right or interest than the will gives him.

(δ) Heir *general*, or heir *at law*. He who, after his father or ancestor's death, has a right to inherit all his lands, tenements, and hereditaments.

(ε) Heir *presumptive*. He who, if the ancestor should die immediately, would be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son.

(ζ) *Hæres sanguinis et hæreditatis*. (Heir of the blood and inheritance.) A son who may be defeated of his inheritance by his father's displeasure.

(η) Heir *special*. An heir who is not heir at common law, e.g., heir by the custom of gavelkind, borough-English, or heir-in-tail. See *Co. Litt.* 376 *b*, 386 *b*.

(θ) *Ultimus hæres*. He to whom lands come by escheat for want of proper heirs. He is either the lord of the manor or the Crown.

In the Scotch law heir has a more extended significance, comprehending not only those who succeed to lands, but successors to personal property also. See *Erskine's Institutes*, b. 3, tit. 8, s. 47 *et seq.*

Heirdom, succession by inheritance.

Heiress, a female heir. Where there are several, they are called *co-heiresses*.

Heirloom [fr. *hæres*, Lat., heir, and *geloma*, Sax., goods], personal chattels, such as charters, deeds, and evidences of title, which go to the heir, together with the inheritance.

The term '*heirlooms*' is often applied in practice to the case where certain chattels—for example, pictures, plate, or furniture—are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the word is not then employed in its strict and proper sense, nor is the disposition itself beyond a certain point effectual; for the articles will, in such case, belong absolutely to the first person who, under the limitations, would take a vested estate of inheritance in them supposing they had been real estate; and if he die intestate, will pass to his personal representative, and not to his heir.—*Co. Litt.* 18 *b*, 185 *b*; and see 2 *Steph. Com.*, bk. ii., pt. ii.

The 37th section of the Settled Land Act, 1882, 45 & 46 Vict. c. 38, provides that 'where personal chattels are settled on trust, so as to devolve with land until a tenant in tail by purchase is born or attains the age of 21 years, or so as otherwise to vest in some person becoming entitled to a freehold estate of inheritance in the land,' a tenant for life may, by order of the Chancery Division of the High Court, sell the chattels or any of them, the proceeds of the sale to be dealt with as 'capital trust money' under the Act, or under the trusts of the settlement.

Heirship movables, those things which the law withholds from the executors and next of kin, and gives to the heir, that he may not succeed to a house and lands completely dismantled. They consist of the best of everything; furniture, horses, cows, oxen, farming utensils, etc., but do not include fungibles.—*Scotch Law.*

Hell, a place under the Exchequer Chamber, where the king's debtors were confined.—*Richard. Dict.*

Helm, thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the tiller or handle of the rudder of a ship.

Helowe-wall [fr. *hælan*, Sax., to cover], the end-wall covering and defending the rest of the building.—*Paroch. Antiq.* 573.

Helsing, a Saxon brass coin of the value of a halfpenny.

Hemoldborh, or **Helmelberch** [fr. *heimilld*, O. N.; *hjemmel*, Dan., just claim to a thing; and *bohr*], a title to possession. The admission of this old Norse term into the laws of the Conqueror is difficult to be accounted for; it is not found in any Anglo-Saxon law extant.—*Anc. Inst. Eng.*

Henchman, a page; an attendant; a herald.

Henedpenny, a customary payment of money instead of hens at Christmas; a composition for eggs.—*Cowel.*

Henfare, a fine for flight on account of murder.—*Domesday Book.*

Hengen, a prison for persons condemned to hard labour.—*Anc. Inst. Eng.*

Hengham (de), Radulph, author of a law-treatise composed in the reign of Edward I. It consists of two parts: one called *Summa Magna*, and the other *Summa Parva.* It seems to be a collection of notes relating to proceedings in actions.

Henghen, a prison; a house of correction.

Hengwite. See HANGWIT.

Heordfæte, or **Hudefæst,** a master of a family, keeping house, distinguished from a lower class of freemen—viz., *folgeras* (*folgarii*), who had no habitations of their own, but were house-retainers of their lords.—*Anc. Inst. Eng.*

Heordpenny, Peter-pence.—*Cowel.*

Heordwerch, the service of herdsmen, done at the will of their lord.

Heptarchy [fr. ἑπτά, Gk., and ἀρχή], a government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by the German tribes, namely: that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira by the Angles. To these were added, about the year 586, an eighth, called the kingdom of Mercia, also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed what has been designated the Anglo-Saxon Octarchy, or more commonly, though not so correctly, the Anglo-Saxon Heptarchy, from the custom of speaking of Deira and Bernicia under the single appellation of the kingdom of Northumberland.

Herald [fr. *here*, Sax., an army, and *heald*, a champion; *hérault*, *héraut*, Fr.; *herald* Ger.; *araldo*, Ital.; because it was part of his office to charge or challenge unto battle or combat], an officer who registers genealogies, adjusts ensigns armorial, regulates funerals, and carries messages between princes, and proclaims war and peace. Heralds were anciently called *dukes at arms*, probably from the Latin *ducere ad arma*; because the conducting of affairs concerning peace and war devolved upon them, their office being to carry messages to the enemy, and to proclaim war and peace. Hence the persons of heralds were deemed sacred by the law of nations, and were received and protected by belligerent powers, as flags of truce are in the present day. The three chief heralds are called *Kings of Arms*; of whom (1) *Garter* is the principal, instituted by Henry V. His office is to attend the knights of the garter at their solemnities, and to marshal the funerals of the nobility. (2) *Clarencieux King of Arms*, ordained by Edward IV., so called from the Duke of Clarence. He is to marshal and dispose the funerals of the inferior nobility on the south side of the Trent. (3) *Norroy* (*North Roy*) *King of Arms*, holds a similar department on the north side of the river Trent. These two last are denominated *provincial* heralds, because they divide the kingdom between them into provinces. Besides the kings of arms, there are six subordinate heralds, according to their original, as they were created to attend dukes and great lords in martial expeditions, i.e., *York*, *Lancaster*, *Chester*, *Windsor*, *Richmond*, and *Somerset*; the four former were instituted by Edward III., and the two latter by Edward IV. and Henry VIII. To these, upon the accession of George I. to the Crown, on account of his Hanoverian dominions, a new herald was added, called *Hanover* herald; and another styled *Gloucester* King of Arms.

To the superior and inferior heralds are added four others, called *marshals* or *pursuivants of arms*, who commonly succeed in the places of such heralds as die or are promoted; they are denominated *blue-mantle*, *rouge-croix*,

rouge-dragon, and *portcullis*. See POURSUIVANT and HERALDS' COLLEGE.

Lord Lyon's Office in Scotland, and *Ulster King of Arms* in Ireland, are distinct and independent.—*Encyc. Lond.*

Heraldry: (1) The science of heralds, see last title. (2) An old and obsolete abuse of buying and selling precedence in the paper of causes for hearing.—See *North's Life of Lord-Keeper Guildford*, vol. i., 435.

Heralds' College, an ancient royal corporation, first instituted by Richard III., in 1483, situated on St. Bennet's Hill, near St. Paul's in the city of London. The above-named heralds, together with the earl marshal and a secretary, are the members of this corporation; in all thirteen persons. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriage and descents as were verified to the mupon oath, are allowed to be good evidence of pedigrees.—3 *Stark. Evid.* 843. See HERALD.

The Heralds' office is still empowered to make grants of arms and to permit change of names. See SURNAME.

Herbagium anterius, the first crop of grass or hay, in opposition to after-math or second cutting.—*Paroch. Antiq.* 459.

Herbenger, or **Harbinger**, an officer in the royal house, who goes before, and allots the noblemen and those of the household their lodgings; also, an innkeeper.

Herbergagium, lodgings to receive guests in the way of hospitality.—*Cowel.*

Herbergare, to harbour; to entertain.

Herbergatus, spent in an inn.—*Cowel.*

Herbery, or **Herbury**, an inn.—*Cowel.*

Herce, **Hercia**, a harrow.—*Fleta*, l. 2, c. lxxvii.

Herciare, to harrow.—4 *Inst.* 270.

Herdewich, or **Herdewic**, a grange or place for cattle or husbandry.—*Mon. Angl.* part 3.

Herdwerch, **Heordwerch**, herdsmen's work, or customary labour, done by shepherds and inferior tenants, at the will of the lord.—*Cowel.*

Herebannum, a mulct for not going armed into the field when summoned.—*Spelm.*

Herebote, the royal edict, summoning the people to the field.—*Cowel.*

Hereditaments, every kind of property that can be inherited; i.e., not only property which a person has by descent from his ancestors, but also that which he has by purchase, because his heir can inherit it from him. The two kinds of hereditaments are *corporeal*, which are tangible (in fact, they mean the same thing as land), and *incorporeal*, which are not tangible, and are the rights and profits annexed to, or issuing out of land.

The enumeration of incorporeal hereditaments in Hale's *Analysis* (p. 48), is the following:—Rents, services, tithes, commons, and other profits *in alieno solo*, pensions, offices, franchises, liberties, villeins, dignities. But Blackstone enumerates ten principal kinds: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents.—*Com.* i. 21.

Although the word 'hereditament' applies both to realty and personalty, yet it is in a different mode of relation. When applied to *realty* it generally denotes the *subject* of property, apart from its nature and extent; but when applied to *personalty*, it does not then denote the *subject*, but signifies some inheritable *right* of which the subject is susceptible.

There is a third application of this word—it is used to denote inheritable *rights* relating to land, or something issuing therefrom or exercisable therein, or having some local connection or relation *distinct* from the enjoyment of the land itself. In this view of the description hereditaments divide themselves into real, personal, and mixed, and therefore, as was said before, they are applicable to all the kinds of property.—*Fearne's Reading on the Stat. of Inrolments.*

Hereditary right to the Crown. The Crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by Parliament; but, notwithstanding such limitation, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.—1 *Bl. Com.*, chap. iii.

Herefare, a military expedition; a going to war.—*Cowel.*

Heregeld, a tribute or tax levied for the maintenance of an army.—*Cowel.*

Herellus, certain little fish, probably minnows.—*Cowel.*

Heremitorium, a place of retirement for hermits.—*Mon. Angl.*, tom. 3, p. 18.

Heremones, or **Hereteams**, followers of an army.—*Lamb. Leges Inæ*, cap. 5.

Herenach, an archdeacon.—*Cowel.*

Hereslita, **Heressa**, **Heressix**, a hired soldier who departs without license.—4 *Inst.* 128.

Heresy [fr. αἵρεσις, Gk.], according to Blackstone, consists not in a total denial of Christianity, but in a public and obstinate denial of any of its principal doctrines publicly and obstinately avowed. The 1 Eliz. c. 1, repealed all former statutes relating to heresy, leaving the jurisdiction of heresy as it stood at common law; that is, it left the simple offence to be visited by spiritual punishment

in the Ecclesiastical Courts, which Courts have long since ceased to exercise jurisdiction over laymen. Heresy in the clergy is punishable under the Church Discipline Act, as an offence against the laws ecclesiastical. See *Noble* v. *Voysey*, 39 *L. J. Eccl.* 21; *Sheppard* v. *Bennett*, *L. R.* 4 *P. C.* 350. See also titles APOSTACY and BLASPHEMY.

Heretoch [fr. *here*, an army, and *teohan*, to draw or lead], a general, leader, or commander; also a baron of the realm.—*Du Fresne.*

Heretum, a court or yard.—*Jacob.*

Herge [fr. *exercitus*, Lat.], offenders who joined in a body of more than thirty-five to commit depredations.—*Ang.-Sax.*

Herigalds, a sort of garment.—*Cowel.*

Heriot [supposed by some to be derived fr. *here*, Sax., an army, and *geat*, provision.—*Willis*, 194. Coke derives it fr. *here*, lord, and *geat*, beste, i.e., the lord's beste.—*Co. Litt.* 185 *b.*], originally a tribute to the lord of a manor of the horse or habiliments of the deceased tenants, in order that the *militiæ apparatus* might continue to be used for the purpose of national defence by each succeeding tenant. On the decline of the military tenures, the heriot was commuted for a money payment, or for the tenant's best beast (*averium*) or dead chattel.

The extinction of heriots was first attempted by 4 & 5 Vict. c. 35, s. 18. By the 'Copyhold Act, 1852,' s. 16, and the 'Copyhold Act, 1858,' s. 27, more effectual provisions are made for this purpose.

Herischild, military service, or knight's fee.—*Cowel.*

Heriscindium, a division of household goods.—*Blount.*

Herislit, laying down of arms.—*Blount.*

Heristall, a castle.—*Spelm.*

Heritable bond, a bond for money, joined with a conveyance of land or heritage, to be held by a creditor as security for his debt.—*Scotch term.*

Heritable jurisdiction, grants of criminal jurisdiction, anciently bestowed on great families in Scotland, with a view to the more easy administration of justice. Abolished by 20 Geo. II. c. 43.

Heritable rights, all rights to land, or whatever is connected with lands, as mills, fishing, tithes, etc.—*Scotch phrase.*

Heritable securities in Scotland. See 23 & 24 Vict. cc. 15, 80.

Heritor, a landholder in a parish.—*Scotch term.*

Hermaphroditus tam masculo quam fœminæ comparatur secundum prævalentiam sexus incalescentis. Co. Litt.—(An hermaphrodite is to be considered male or female, according to the predominancy of the prevailing sex.)

Hermeneutics, the art of interpretation and construction.

Hermer, a great lord.—*Jacob.*

Hermitorium, the chapel or place of prayer belonging to a hermitage.

Hermogenian Code. See CODEX HERMOGENIANUS.

Hernescus, a heron.—*Cowel.*

Hernesium, or **Hernasium**, household goods; implements of trade or husbandry.—*Cowel.*

Heroudes, heralds.—*Du Cange.*

Herring (British White) Fisheries Act. See 14 & 15 Vict. c. 26, and Acts mentioned in the recital to that Act; and see also 31 & 32 Vict. c. 45; 37 & 38 Vict. c. 25.

Herring silver was a composition in money for the custom of supplying herrings for the provision of a religious house.

Hesia, an easement.—*Du Cange.*

Hesta, **Hestha**, a little loaf of bread.

Hestoorn, vowed or devoted corn.—*Cowel.*

Hetærarcha [fr. ἑταῖρος Gk., friend, and ἀρχή, government], the head of a religious house; the head of a college; the warden of a corporation.

Heuvelborgh, a surety for debt.—*Du Fresne.*

Heybote. See HAYBOTE.

Heyloed, a customary burden laid upon inferior tenants for mending or repairing the heys or hedges.—*Cowel.*

Heymectus, a hay-net; a net for catching conies.—*Cowel.*

Hibernagium, season for sowing winter corn.—*Cowel.*

Hidage, an extraordinary tax formerly payable to the Crown for every hide of land. This taxation was levied, not in money, but provision of armour, etc.—*Cowel.*

Hide and gain, arable land.—*Co. Litt.* 856.

Hide of land, such a space as might be ploughed with one plough, or as much as would maintain a family or mansion-house. According to some it was sixty acres; others make it eighty; and others, again, a hundred. The quantity, probably, was always determined by local usage. See *Co. Litt.* 69 *a*, and *Cowel.*

Hidel, a place of protection or sanctuary.—*Cowel.*

Hidgild, or **Hidegild** [fr. *hide*, A.-S., skin, and *gild*, A.-S., a contribution], a sum of money paid by a villein or servant to save himself from a whipping.—*Fleta*, l. 1, c. 47, s. 20.

Hierarchy [fr. ἱερός, Gk., sacred, and ἀρχή, government], direction in religious concerns and things sacred.

Of whatever denomination may be the persons who take the lead in conducting

religious rites, whether they be styled presbyters, elders, ministers, priests, or bishops, they virtually, and according to the true and real meaning of the term, constitute a hierarchy. Hierarchy subsists as much among the chief ministers in the Church of Geneva or of Scotland as in the Church of Rome or of England.—*Encyc. Lond.*

Hierloom. See HEIRLOOM.

High Bailiffs, officers appointed under s. 33 of the County Court Act, 1888, by the Judge of each County Court, to attend every sitting of the Court, and by themselves, or the bailiffs appointed to assist them, to serve all summonses and orders, and execute all warrants, precepts, and writs of the Court except as in the Act provided.

High Commission Court, established by 1 Eliz. c. 1. It was instituted to vindicate the dignity and peace of the Church, by reforming and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. The powers of this tribunal were directed to tyrannical and unconstitutional purposes; it was therefore abolished by 16 Car. I. c. 11.—5 *Reeves*, 215.

High Constable. See CONSTABLE.

High Constable of England, Lord. His office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII. See CHIVALRY, COURT OF.

High Court of Chancery. See CHANCERY.

High Court of Justice. By the Judicature Act, 1873 (36 & 37 Vict. c. 66), the former Superior Courts of Law and Equity have been abolished, and in their place has been established a Supreme Court of Judicature (see that title), consisting of the Court of Record, and has vested in it, by s. 16 of the Act, amended by ss. 9 and 33 of the Judicature Act, 1875, the jurisdiction formerly exercised by the following Courts, viz.: '(1) The High Court of Chancery; (2) the Court of Queen's Bench; (3) The Court of Common Pleas at Westminster; (4) The Court of Exchequer; (5) The Court of Admiralty; (6) The Court of Probate; (7) The Court for Divorce and Matrimonial Causes; (8) The Court of Common Pleas at Lancaster; (9) The Court of Pleas at Durham; (10) The Courts created by Commissions of Assize, of *Oyer* and *Terminer*, and of Gaol Delivery, or any such Commissions.

With regard to the procedure of the High Court of Justice, see the various titles relating thereto, e.g., EXECUTION, JUDGMENT, PLEADING, TRIAL. See also DIVISIONS OF THE HIGH COURT.

High Court of Parliament. See PARLIAMENT.

High Misdemeanours. See MISPRISION.

High Steward, Court of the Lord, a tribunal instituted for the trial of peers indicted for treason or felony, or for misprision of either, but not for any other offence. The office is very ancient, and was formerly hereditary, or held for life, or *dum bène se gesserit*; but it has been for many centuries granted *pro hâc vice* only, and always to a lord of parliament. When, therefore, such an indictment is found by a grand jury of freeholders in the Queen's Bench, or at the assizes before a judge of *oyer* and *terminer*, it is removed by a writ of *certiorari* into the Court of the Lord High Steward, which alone has power to determine it.

The Sovereign, in case a peer be indicted for treason, felony, or misprision, appoints a Lord High Steward *pro hâc vice*, by commission under the Great Seal, which, reciting the indictment so found, gives him power to receive and try it *secundum legem et consuetudinem Angliæ*. When the indictment is regularly removed by *certiorari*, the Lord High Steward addresses a precept to a serjeant-at-arms, to summon the lords to attend and try the indicted peer. All the peers who have a right to sit and vote are summoned twenty days before such trial, and every lord appearing and taking the oaths may vote upon the trial. The decision is by the majority, but a majority cannot convict, unless it consist of twelve or more.

During a session of Parliament, the trial is not properly in the Court of the Lord High Steward, but before the High Court of Parliament. A Lord High Steward is, however, always appointed to regulate the proceedings; but he is rather in the nature of a speaker or chairman than a judge, for the collective body of the peers are the judges, both of law and fact, and the High Steward has a vote with the rest, in right of his peerage. But in the Court of the Lord High Steward, which is held in the recess of Parliament, he is the sole judge of matters of Law, as the lords triers are in matters of fact, and he may vote upon the trial and regulate all the proceedings.

The method and regulation of proceeding differs little from trial by jury, except that no special verdict can be given, because the judges are sufficiently competent to deal with the law as it arises out of the facts.—4 *Bl. Com.* 261.

High Steward of the Royal Household, Lord, Court of, a tribunal long since fallen into disuse.—9 *Geo. IV.* c. 31; 4 *Inst.* 133.

High Steward of the Universities, Court of the Lord. By the charter of 7 June, 2

Hen. IV., confirmed by 13 Eliz. c. 29, conusance is granted to the University of Oxford, of all indictments of treasons, insurrections, felonies, and mayhem, which shall be found in any of the Queen's Courts against a scholar or privileged person; they are to be tried before the Lord High Steward or his deputy, who is nominated by the Chancellor of the University, and approved of by the Lord High Chancellor of England. A special commission is given to him and others to try the indictment then depending, according to the law of the land, and the privileges of the University. The indictment must first be found by a grand jury, and the cognizance claimed of it in the first instance, or at the first day.

When the cognizance is allowed, if the offence be a misdemeanour, it is tried in the Chancellor's Court by the ordinary judge. If it be for treason, felony, or mayhem, it is determined before the Lord High Steward, who issues one precept to the sheriff of the county, who returns a pannel of eighteen freeholders, and another to the University bedels, who return a pannel of eighteen matriculated laymen. The indictment is then tried by a jury *de medietate*, half of freeholders, and half of matriculated laymen, in the guildhall there. The sheriff must execute the university process, to which he is bound by an oath.—4 *Bl. Com.* 277; and 4 *Steph. Com.* The University of Cambridge has also a similar jurisdiction. By 19 & 20 Vict. c. 17, s. 18, the jurisdiction of the University of Cambridge, in criminal as well as other proceedings, wherein any person not a member of the university shall be a party, is taken away. See CHANCELLOR OF THE TWO UNIVERSITIES.

High Treason. Since *petit* treason was abolished by 9 Geo. IV. c. 31, s. 2, the correlative term *high* is not now usually retained when speaking of this highest civil crime. It is merely denominated treason. See TREASON.

Highlands Roads and Bridges Act, 1862, 25 & 26 Vict. c. 105.

Highness, a title of honour given to princes. The kings of England, before the time of James I., were not usually saluted with the title of *Majesty*, but with that of *Highness*. The children of crowned heads generally receive the style of *Highness*.

High-water-mark, that part of the sea-shore to which the waters ordinarily reach when the tide is highest.

High-wood, timber.

Highway-rate, a tax for the maintenance and repair of highways, chargeable upon the same property that is liable to the poor-rate. The rate is to be made and signed by the surveyor, who keeps accounts, which may be inspected at all reasonable times by the rated inhabitants, without fee or reward. The yearly account is laid before the vestry, and examined and passed before justices of the peace, at the special sessions of the highways. See *Chitty's Statutes*, vol. iii., tit. '*Highways*.'

The Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, enacts that an order of a parish vestry for rating owners of small tenements, instead of occupiers, to the poor rate shall extend to the highway rate; that the 'valuation list' shall be conclusive for the purposes of the highway rate; and that the expenses incurred by a highway authority in maintaining milestones and fences shall be a lawful charge on the highway rate.

Highway robbery. See ROBBERY, and 24 & 25 Vict. c. 96.

Highways, public roads, which every subject of the kingdom has a right to use. They exist either by prescription, by authority of local Acts of Parliament, or by dedication to the use of the public.

The liability to keep highways in repair (in whatever manner they may happen to have first originated) is of common right incumbent generally upon the parishes in which they respectively lie; but in some cases it attaches (by prescription) to particular townships, or other divisions of parishes, and occasionally to private persons bound *ratione tenuræ*, or in right of their estates, to repair some particular highway.

Highways in general are regulated by 5 & 6 Wm. IV. c. 50 (amended by 4 & 5 Vict. cc. 51, 59; 8 & 9 Vict. c. 71; 25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101; and 41 & 42 Vict. c. 77), which has repealed all former enactments on the subject, and is applicable to all highways whatever, except turnpike roads, and roads, pavements, or bridges, falling under the provisions of local Acts of Parliament, a description which applies generally to the streets of towns.

The general plan of the Act is to place highways under the care of surveyors, to be appointed for the respective parishes, subject to a superintending power to be exercised by the justices of the peace, at special sessions to be holden for the highways. By the Public Health Act, 1875, s. 144 (coming in place of previous enactments to the like effect), the powers and duties of surveyors of highways and vestries under the Act of Wm. IV., are vested in urban authorities.—By the 35 & 36 Vict. c. 79, s. 36, the powers of the Secretary of State, under the Highway and Turnpike Acts, are transferred to the Local Government Board. Consult *Glen*, or *Shelford*, or *Spear-*

man on Highways, and see *Chitty's Statutes*, vol. iii., tit. '*Highways*.' As to the use of locomotives on highways, see LOCOMOTIVES.

Higler, a person who carries from door to door and sells, by etail, provisions, etc.

Hikenilde Street, one of the four Roman roads of Britain, leading from St. David's to Tynemouth, thus described by Trevisa:—'The fourthe is called *Heykenyldestrete*, and stretcheth forth by Worchestre, by Wycombe, by Byrmyngeham, by Lichefeld, by Derby, by Chestrefeld, by Yorke, and fourth unto Tynmouthe.'—*Polychron.*, l. 1, c. xlv.

Hilary Term. This was one of the law terms. It began on the 11th and ended on the 31st January in each year. It was an issuable term (1 Wm. IV. c. 70, s. 6). It was so called from Hilary, Bishop of Poictiers, in France, a great champion of the Catholic faith against the Arians in the fourth century. By the Judicature Act, 1873, s. 26, 'the division of the legal year into terms is abolished, so far as relates to the administration of justice.' See SITTINGS.

Hindeni Homines, a society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, etc., according to their class. The highest class were valued at 1200*s*. and were called *twelf hindmen*; the middle class at 600*s*. and called *sexhindmen*; the lowest at 200*s*. called *twyhindmen*. Their wives were termed *hindas*.—*Brompt. Leg. Alfred.* c. xii.

Hinde Palmer's Act, 32 & 33 Vict. c. 46, which abolished the priority of specialty (see SPECIALTY) over simple contract debts in the administration of the estate of a person dying after January 1st, 1870.

Hine, or **Hind**, a husbandry servant.

Hine fare, the loss or departure of a servant from his master.—*Domesday*.

Hinegeld. See HIDGILD.

Hirciscunda, the division of an inheritance among heirs.—*Cowel*.

Hireman, a subject.—*Du Cange*.

Hiring [*locatio, conductio*, Lat.], a bailment for a reward or compensation. It is divisible into four sorts:—(1) The hiring of a thing for use (*locatio rei*). (2) The hiring of work and labour (*locatio operis faciendi*). (3) The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ*). (4) The hiring of the carriage of goods (*locatio operis mercium vehendarum*), from one place to another. The three last are but subdivisions of the general head of hire of labour and services.

The rights, duties, and obligations of the parties resulting from the contract of bailment for hire may be thus stated:—

(I.) Hire of things. The letting to hire implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act that shall deprive the hirer of the thing; to warrant the title and right of possession to the hirer, in order to enable him to use the thing, or to perform the service; to keep the thing in suitable order and repair for the purposes of the bailment; and, finally, to warrant the thing free from any fault inconsistent with the proper use or enjoyment of it. It is the duty of the person letting to hire, according to the Roman law, to disclose the faults of the thing hired, and practise no artful concealment, to charge only a reasonable price therefor, and to indemnify the hirer for all expenses which are properly payable by the person letting. The rights of the hirer are that he acquires that right of possession only of the thing for the particular period or purpose stipulated (but he acquires no property in it); and that he also acquires the exclusive right to the use of the thing during the time of the bailment. His duties are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the price or hire; and, in general, to observe whatever is prescribed by contract, or by law, or by custom. The contract may be dissolved or extinguished in respect to future liabilities in various ways: (1) by the mere efflux of the time, or the accomplishment of the object for which the thing is hired; (2) by the loss or destruction of the thing by any inevitable casualty; (3) by a voluntary dissolution of the contract by the parties; and (4) by operation of law, as where the hirer becomes proprietor by purchase or otherwise of the thing hired. How far those principles, which are derived altogether from the Roman and foreign laws, are to be deemed satisfactorily established in our jurisprudence, is a matter for consideration, since the common law does not furnish any direct recognition of them. But it may be safely affirmed that they are so consonant with general justice, and with the nature of the contract, that in the absence of any controlling authority, they may be used as fit guides to assist our general reasoning.

(II.) Hire of labour and services, divisible into two branches:—(α) *Locatio operis faciendi*, and (β) *locatio operis mercium vehendarum*, mentioned as the 2nd and 4th divisions of the four sorts of hiring above set forth.

(α) The *locatio operis faciendi* may be subdivided into two kinds:—(a) The hire of labour and services, or *locatio operis faciendi*, strictly so called: such are the hire of tailors

to make clothes, of jewellers to set gems, and of watchmakers to repair watches; (b) *locatio custodiæ* (the third division first above mentioned), or the receiving of goods on deposit for a reward for the custody thereof, which is properly the hire of care and attention about the goods, as by warehousemen, wharfingers, etc.

(a) In contracts for work it is of the essence of the contract:—(1) That there should be work to be done; (2) that it should be to be done for a price, or reward; (3) that there should be a lawful contract between parties capable and intending to contract. The obligations and duties on the part of the employer as deduced in the foreign law, are principally these:—(1) To pay the price or compensation; (2) to pay for all proper new and accessorial materials; (3) to do everything on his part to enable the workman to execute his engagement; (4) to accept the thing when it is finished. If, before the work is finished, the thing perishes by internal defect, by inevitable accident, or by irresistible force, without any default of the workman, then, (1) if the work is independent of any materials or property of the employer, the manufacturer has the risk, and the unfinished work is lost to him; (2) if he is employed in working up the materials, or adding his labour to the property of the employer, the risk is with the owner of the thing with which the labour is incorporated; (3) if the work have been performed in such a way as to afford a defence to the employer against a demand for the price, if the accident had not happened (as if it were defectively or improperly done), the same defence will be equally available to him after the loss. The obligations or duties on the part of the workman or undertaker are thus summed up in the foreign law:—To do the work; to do it at the time agreed on; to do it well; to employ the materials furnished by the employer in a proper manner; and, lastly, to exercise a proper degree of care and diligence about the work.

(b) The hiring of care and attention. To this class belong agistors of cattle, warehousemen, forwarding merchants, and wharfingers. They are bound to use ordinary diligence, and of course are responsible for losses by ordinary negligence.

(β) The *locatio operis mercium vehendarum*, or the carriage of goods for hire. In respect to contracts of this sort entered into by private persons, who do not exercise the business of common carriers, there does not seem to be any material distinction varying the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and to a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by the ordinary negligence of himself or of his servants. The exceptions to this general rule are postmasters, innkeepers, and common carriers. These are under peculiar regulations consonant with public policy. See those titles respectively. —*Story on Bailments*, c. vi.; *Addison* or *Chitty on Contracts*.

Hist, or **Hurst**, a wood.—*Domesday; Co. Litt.* 4 *b*.

His testibus (*these being witnesses*), a phrase anciently added in deeds, after *in cujus rei testimonium*. The deed was read in the presence of witnesses, and their names were then written down. The phrase is not now inserted.

Hiwisc, a hide of land.

Hlaf æta, a servant fed at his master's cost.

Hlaford, a lord.—*Ang.-Sax.*

Hlafordsocna, a lord's protection.—*Du Cange*.

Hlasocna, the benefit of the law.—*Du Cange*.

Hlothbote, a mulct set on him who commits homicide in a riot or hlothe.

Hlothe [*turma*, Lat.], an unlawful company, from eight to thirty-five inclusive.—*Cowel*.

Hlytas [fr. *sortes*, Lat.], lots.

Hoastmen, an ancient guild or fraternity in Newcastle-upon-Tyne, engaged in selling or shipping coal.—21 *Jac. I.* c. 3, s. 12.

Hobblers, or **Hobilers**, light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or suchlike peril, towards the seaside.—*Camd. Brit.*

Hobhouse's Act, 1 & 2 Wm. IV. c. 60, an adoptive Act for the better regulation of parish vestries.

Hoccus saltis, a hoke, hole, or lesser pit of salt.—*Cowel*.

Hockettor, or **Hocqueteur**, a knight of the post; a decayed man; a basket carrier.—*Cowel*.

Hock-Tuesday Money, was a duty given to the landlord, that his tenants and bondmen might solemnise the day on which the English conquered the Danes, being the second Tuesday after Easter-week.—*Cowel*.

Hoga, Hogium, Hoch, a mountain or hill.—*Du Cange*.

Hogaster, a little hog; a young sheep.—*Cowel*.

Hogenhine. See THIRD-NIGHT-AWN-HINDE.

Hoggacius, Hoggaster, a sheep of the second year.—*Cowel*.

Hoggus, or **Hogietus**, a hog or swine.—*Cowel*.

Hogshead, a measure containing half a pipe, a fourth part of a tun, or sixty-three gallons.

Hokeday. See HOCK-TUESDAY MONEY.

Hold (*v. a.* or *v. n.*), to have as tenant.

Hold (*v. a.* or *v. n.*), of a Court or Judge, to enounce a legal opinion. In strictness, a court 'holds,' and a single judge 'rules.'

Hold, or **Wold**, a governor or chief officer.—*Gibs. Camd.*

Holder, a payee or indorsee in possession of a bill of exchange or a promissory note.

Holder in due course, is 'a holder who has taken a bill of exchange [cheque or note], complete and regular on the face of it,' under the following conditions: namely,—

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact.

(*b*) That he took the bill [cheque or note] in good faith and for value, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it.—*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 29.

Holding, a term used in the Agricultural Holdings Act to signify a farm; also in Scotch law to signify the tenure or nature of the right given by the superior to the vassal.—*Bell's Dict.*

Holding over, keeping possession of land by a lessee after the expiration of his term, whereby he usually becomes, if he pays subsequent rent, tenant from year to year on the terms of the expired lease.—*Hyatt* v. *Griffiths*, 17 *Q. B.* 505.

A tenant wrongfully holding over premises of which the value does not exceed 50*l.* a year may be ejected by proceedings in the County Court, or if the term do not exceed 7 years, or the rent 20*l.* a year, by proceedings before justices of the peace under 1 & 2 Vict. c. 74. See also DOUBLE RENT; DOUBLE VALUE.

Holiday, or **Holyday**, an anniversary feast; a time of festivity. Also called a red letter day. State holidays are either appointed by Act of Parliament or founded on ancient usage. Fast and thanksgiving days are occasionally appointed by royal proclamation.

By R. S. C. 1883, Ord. LXIII., r. 6, it is provided that the several offices of the Supreme Court shall be open on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit-Monday, Christmas-day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving; and by r. 3 of the same Order, sittings of the Courts are not necessary on the day kept as the Queen's Birthday. See also VACATION.

The Bank Holidays Act, 1871, 34 & 35 Vict. c. 17, provides that Easter Monday, the Monday in Whitsun-week, the first Monday in August and the 26th day of December, if a week day, shall be kept as close bank holidays in England and Ireland, and New Year's day, Christmas-day (or, if either be a Sunday, the following day), Good Friday, the first Monday of May, and the first Monday of August, in Scotland; and also that bills of exchange and promissory notes due on bank holidays shall be payable on the following day. And this is further extended to docks, custom houses, Inland Revenue offices, and bonding warehouses, in England and Ireland, by the Holidays Act, 38 Vict. c. 13; which Act also, when the 26th of December is a Sunday, makes the 27th a holiday.

Holm [fr. *hulmus*, Sax.; *insulu amnica*, Lat.], an isle, or fenny ground; a river island; also a hill or cliff.—*Co. Litt.* 5 *a.*

Holograph [fr. ὅλος, Gk., all, and γράφω, to write], a deed or writing, written entirely by the grantor himself, which on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses. See *Bell's Scotch Law Dict.*

Holt, a wood.—*Co. Litt.* 4 *b.*

Holy orders. These are, in the English Church, the orders of bishops (including archbishops), priests, and deacons. See CLERGY.

Homage [fr. *homo*, Lat., a man], the most honourable service of reverence that a free tenant might do to his lord. When a tenant performed it, he was ungirt, and his head uncovered, the lord sitting; the tenant then knelt before him, and held his hands extended and joined between the hands of his lord, and said thus:—'I become your man from this day forward, of life, and limb, and earthly honour, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you (saving the faith that I owe unto our sovereign lord the king): so help me God.' The lord then kissed him. Homage could only be done to the lord himself, but fealty might to his steward or bailiff.—*Litt.* 85. See COPYHOLD.

Homage ancestral, where a tenant holds lands of his lord by homage; and the same tenant and his ancestors have holden the same land of the same lord, and of his ancestors, immemorially, and have done to them homage. 1 *Inst.* 100.

Homage jury, a court in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the death

of tenants, surrenders, admittances, and the like.

Homager, one who does or is bound to do homage.—*Cowel.*

Homagio respectuando (*respecting of homage*), a writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done.—*F. N. B.* 269.

Homagium reddere (*to renounce homage*), when a vassal made a solemn declaration of disowning his lord; for which there was a set form and method prescribed by the feudal laws.—*Brac.* 1. 2, c. xxxv., s. 35.

Homagium, non per procuratores nec per literas fieri potuit, sed in propriâ personâ tam domini quam tenentis capi debet et fieri. Co. Litt. 68.—(Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of lord as the tenant.)

Home Office, the department of state through which the sovereign administers most of the internal affairs of the kingdom, especially the police and communications with the judicial functionaries.

Homesoken, Homsoken. See HAMESOKEN.

Homestall, a mansion-house.

Homicide, destroying the life of a human being. In its several stages of guilt, arising from the particular circumstance of mitigation or aggravation which attends it, it is either justifiable, excusable, or felonious.

I. *Justifiable*, of three kinds:

(α) Where the proper officer executes a criminal in strict conformity with his sentence.

(β) Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it.

(γ) Where it is committed in prevention of a forcible and atrocious crime.—1 *Hale*, 488.

II. *Excusable*, of two kinds:—

(α) *Per infortunium*, or by misadventure, as where a man doing a lawful act, without any intention of hurt, by accident kills another.

(β) *Se defendendo*, as where a man kills another upon a sudden encounter in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

III. *Felonious*, of two kinds:—

(α) Killing one's self.

(β) Killing another, which is either—

(1) Murder; or

(2) Manslaughter; and this is either—

(α) Voluntary, where a man doing an unlawful act, not amounting to felony, by accident kills another; or

(β) Involuntary, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another, by some personal violence, etc., and the other immediately kills him. Consult *Russell on Crimes.*

Hominatio, the mustering of men; the doing of homage.

Homine capto in withernamium, a writ to take him that had taken any bondman or wyman, and led him or her out of the country, so that he or she could not be replevied according to law.—*Reg. Orig.* 79.

Homine eligendo ad custodiendam peciam sigilli pro mercatoribus editi, a writ directed to a corporation for the choice of a man to keep one part of the seal appointed for statutes-merchant, when a former is dead, according to the Statute of Acton Burnell.—*Reg. Orig.* 178.

Homine replegiando, a writ to bail a man out of prison.—*Reg. Orig.* 77. All these writs are totally disused.

Homines, feudatory tenants who claimed a privilege of having their causes, etc., tried only in their lord's court.—*Paroch. Antiq.* 15.

Homiplagium, the maiming of a man.—*Du Cange.*

Homologation, the express or implied ratification of an act that formerly was null or voidable, or in some way defective.—*Bell's Scotch Law Dict.*

Homo potest esse habilis et inhabilis diversis temporibus. 5 Co. 98.—(A man may be capable and incapable at different times.)

Homo trium litterarum (f, u, r,), a thief.

Homstale, a mansion-house.

Hond-habend. See HAND-HABEND.

Hong Kong, Governor of. See 6 & 7 Vict. c. 80, and 22 & 23 Vict. c. 9.

Honorarium, a recompense for service rendered; a voluntary fee to one exercising a liberal profession, e.g., a barrister's fee. See PHYSICIAN.

Honorarium jus, the law of the prætors and the edicts of the ædiles.—*Civ. Law.*

Honorary canons, those without emolument.—3 & 4 *Vict.* c. 113, s. 23. See CANONS.

Honorary feuds, titles of nobility, descendible to the eldest son, in exclusion of all the rest.

Honorary services, those incident to grand-serjeanty, and commonly annexed to some honour; services without emolument.

Honorary trustees, trustees to preserve contingent remainders, so called because they are bound, in honour only, to decide on the most proper and prudential course.—*Lewin on Trus.* 408.

Honoris respectum, challenge *propter*. See CHALLENGE.

Honour, a seigniory of several manors held under one baron or lord paramount; also, those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the Crown, the fountain of honour. See 38 Hen. VIII. cc. 37, 38.

Honour, Court of, a branch of the Court of Chivalry. See CHIVALRY, COURT OF.

Honour Courts, tribunals held within honours or seigniories.

Honour (*v.a.*) to honour a bill of exchange, or cheque (of the drawee, etc.); to pay.

Honourable, a tile of courtesy given to the younger children of earls, and the children of viscounts and barons; and, collectively, to the House of Commons.

Hontfongenethef, or **Honfangenethef,** a thief taken with *hond-habend*, i.e., having the thing stolen in his hand.—*Cowel.* See BACKBERINDE.

Hoo, a hill.—*Co. Litt.* 5 *b.*

Hooland, land ploughed and sown every year.—*Scott.*

Hopcon, a valley.—*Cowel.*

Hope, a valley.—*Co. Litt.* 5 *b.*

Hoppo, a collector; an overseer of commerce.—*Chinese.*

Hops. As to the marking and branding of hops, see 29 & 30 Vict. c. 37. And see also 39 & 40 Geo. III. c. 81; 48 Geo. III. c. 134; 54 Geo. III. c. 123.

Hora Auroræ, the morning bell; as *ignitegium*, or *coverfeu*, was the evening bell.

Horda, a cow in calf.—*Old Records.*

Hordera, a treasurer.—*Du Cange.*

Horderium, a hoard, treasury, or repository.

Hordeum palmale, beer barley.—*Cowel.*

Horesti, the people of Angus-upon-the-Tay, or Highlanders.—*Tomlin.*

Hornagium. See HORNGELD.

Horngeld, or **Hornegeld,** a forest-tax paid for horned beasts.

Horn with Horn, or **Horn under Horn,** the promiscuous feeding of bulls and cows, or all horned beasts that are allowed to run together, upon the same common.—*Spelm.*

Horning, Letters of, warrant for charging persons in Scotland to pay or perform certain debts and duties; so called because they were originally proclaimed by horn or trumpet.—*Bell's Scotch Law Dict.*

Hors de son fee (out of the fee), where land is without the compass of a person's fee. —9 *Rep.* 30; 2 *Mod.* 104.

Horseflesh. The sale of horseflesh for human food is regulated by the Sale of Horseflesh re-Regulation Act, 1889, 52 & 53 Vict. c. 11, by which no person may sell horseflesh for human food elsewhere than in a shop, etc., on which shall be painted, etc., words, indicating that horseflesh is sold there.

Horse-Guards, the directing power of the military forces of the kingdom. The commander-in-chief, or general commanding the forces, is at the head of this department; it it subordinate to the War Office, but the relations between them are complicated.

Hors-wealh, the wealh, or Briton who had the care of the king's horses.

Hors-weard, a service or corvée, consisting in watching the horses of the lord.—*Anc. Inst. Eng.*

Horse-racing, a lawful pastime. By 13 Geo. II. c. 19, no plates or matches at horse-races, under 50*l.* value, could be run, under penalty of 200*l.* to be paid by the owner of the horse or horses, and 100*l.* by the advertiser of the plate. This was repealed by 3 & 4 Vict. c. 5. Formerly wagers of not more than 10*l.* on a legal horse-race could be recovered by action, but now all wagers are void. See 8 & 9 Vict. c. 109, s. 5.

Horses. The buying of stolen horses is attempted to be checked by 2 & 3 P. & M. c. 7, and 31 Eliz. c. 12, which require a record of sales at markets; see, as to these Acts, *Pitt.* v. *Moran*, 42 *L. J. Q. B.* 47. As to the limitation of the liability of railway and canal companies for the carriage of horses, see 17 & 18 Vict. c. 31. As to larceny of horses, see 24 & 25 Vict. c. 96, ss. 10, 11. Consult *Oliphant on the Law of Horses.* The Contagious Diseases (Animals) Act, 1878, 41 & 42 Vict. c. 74 (see CATTLE PLAGUE), does not apply to horses, but may be applied to 'horses, asses, and mules, and to glanders and farcy,' by order of the Privy Council, under s. 32 of that Act.

The administration of poisonous drugs to horses is punishable on summary conviction by fine or imprisonment, under the Drugging of Animals Act, 1875, 39 Vict. c. 13.

The license duties on horses, mules, and horse-dealers have now been abolished by 37 Vict. c. 16, s. 11, repealing 32 & 33 Vict. c. 14, so far as relates to those duties.

Horstilers, innkeepers.

Hosiery Manufacture. The 37 & 38 Vict. c. 48, provides for the payment of wages without certain stoppages theretofore customary.

Hospes generalis, a great chamberlain.

Hospitallers, the knights of a religious order, so called because they built an hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the Sovereign by 32 Hen. VIII. c. 24.

Hospitals, eleemosynary corporations. They are either *aggregate*, in which the master or warden and his brethren have the estate of

inheritance, or *sole*, in which the master, etc., only has the estate in him, and the brethren or sisters, having college and common seal in them, must consent, or the master alone has the estate, not having college or common seal.

By 39 Eliz. c. 5, made perpetual by 21 Jac. I. c. 1, any person seised of an estate in fee-simple may, by deed enrolled in Chancery, erect and found an hospital for the sustenance and relief of 'the maimed, poor, needy, or impotent people,' but no such hospital may be erected, unless endowed with lands or hereditaments of the yearly value of 20*l.*

As to the power of local authorities to provide hospitals for their districts, see 38 & 39 Vict. c. 55, s. 131.

Hospitium, procuration or visitation-money.

Hospodar, a Turkish governor in Moldavia or Wallachia.

Hostage, a person given up to an enemy as a security for the performance of the articles of a treaty, etc.

Hostalagium, a right to have lodging and entertainment, reserved by lords, in their tenants' house.—*Old Records.*

Hosteler, or **Hostler**, an innkeeper.

Hostels, the Inns of Court. See that title.

Hosterium, a hoe.—*Chart. Antiq.*

Hostes sunt qui nobis vel quibus nos bellum, decernimus; cæteri proditores vel prædones sunt. 7 Co. 24.—(Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.)

Hostiæ, host-bread, or consecrated wafers in the Holy Eucharist.

Hostilaria, Hospitalaria, a place or room in religious houses used for the reception of guests and strangers.

Hostilarius, a hospitaller.

Hostile witness, a witness who so conducts himself under examination in chief that the party who has called him, or his representative, is allowed to cross-examine him under the 17 & 18 Vict. c. 128, s. 22, i.e., to treat him as though he had been called by the opposite party. As to discrediting a witness in criminal cases, see 28 & 29 Vict. c. 18, s. 3.

Hostricus, a goshawk.—*Paroch. Antiq.* 569.

Hotchpot [fr. *haché en poche*, Fr., a confused mingling of divers things], a blending or mixing of lands and chattels, answering in some respects to the *collatio bonorum* of the civil law.

As to *lands*, it only applies to such as are given in frank-marriage, thus: if one daughter have an estate given with her in frank-marriage by her ancestor, then, if lands descend from the same ancestor to her and her sister in fee-simple (not in fee-tail), she or her heirs shall have no share in them unless they will agree to divide the lands so given in frank-marriage, in equal proportions with the rest of the lands descending, i.e., bringing her lands so given into hotchpot.

As to *personalty*. The Statute of Distribution intended children to take equal shares of the goods and chattels of their intestate ancestor, and it considers that there may be some of the children who have previously received a portion or advancement, but not so much as to make up their full share; in that case such child, so advanced but in part, is allowed so much more out of the intestate's personal estate as will suffice to make his share equal to that of the other children. The Act takes nothing away that has been given to any of the children, however unequal that may have been. How much soever that may exceed the remainder of the personal estate left by the intestate at his death, the child may, if he please, keep it all: if he be not content, but would have more, then he must bring into hotchpot what he has before received. This principle is based upon the equitable doctrine of equality, for it is perfectly coincident with that conduct which a good and just parent would pursue towards all his children.

Hotel-keeper. See INNKEEPER.

House, means *primâ facie* a dwelling-house.—14 *M. & W.* 185; but see 7 *M. & G.* 122. As to what will pass under a grant of a 'house,' see 1 *Crabb's Real Property*, 68, 87. Malicious injuries to houses by tenants, or by means of explosive substances, are punishable by 24 & 25 Vict. c. 97, ss. 9 and 13.

Houseage, a fee paid for housing goods by a carrier, or at a wharf, etc.

Housebote, estovers, or an allowance of necessary timber out of the lord's wood for the repairing or support of a house.

House-breaking. See BURGLARY.

House-burning. See ARSON.

House of Commons, one of the constituent parts of Parliament, being the assembly of knights of shires, or the representatives of counties; citizens, or the representatives of cities; and burgesses, or the representatives of boroughs.

The property qualification of Members of Parliament was abolished by 21 & 22 Vict. c. 26.

Aliens are not eligible as members, neither are minors, lunatics, English or Scotch peers; but Irish peers, unless representative, may sit for any place in Great Britain. The English, Scotch, and Irish Judges are disqualified. Also the holders of various offices particularised by statute, Government contractors,

clergymen, and bankrupts. See *Chitty's Statutes*, vol. iv., tit. '*Parliament*.'

House of Correction, a species of gaol which does not fall under the sheriff's charge, but is governed by a keeper, wholly independent of that office.

Houses of Correction, first established in the reign of Elizabeth, were originally designed for the penal confinement (after conviction) of paupers and vagrants refusing to work; but by 5 & 6 Wm. IV. c. 38, ss. 3, 4, reciting that great inconvenience and expense had been found to result from the practice of committing to the common gaol where it happens to be remote from the place of trial, it is enacted that a justice of the peace, or coroner, may commit for safe custody to any house of correction situate near the place where the assizes or sessions are to be held; and that offenders sentenced in those courts may be committed, in execution of such sentence, to any house of correction for the county.—3 *Steph. Com.* See 14 & 15 Vict. c. 91; and 14 & 15 Vict. c. 55, ss. 20, 21.

House-duty, a tax on inhabited houses imposed by 14 & 15 Vict. c. 36, in lieu of window-duty, which is abolished. See 37 Vict. c. 16, ss. 8—10, providing for the stating of a case; and *Chitty's Statutes*, vol. iii., tit. '*House Tax*.'

House of Lords, a constituent part of Parliament, being composed of the lords spiritual and temporal.

The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons. The number of British peerages of different ranks has been greatly augmented from time to time, and there is no limitation to the power of the Crown to add to it by fresh creation.

Since the 32 & 33 Vict. c. 42, for the disestablishment of the Church in Ireland, the Irish bishops have ceased to be represented in the House of Lords.

The House of Lords has been for a considerable time—at least since the time of Henry the Fourth—the Court of the final appeal, having no original jurisdiction over causes, but only upon appeals and proceedings in error to rectify any injustice or mistake of the law, committed by the Courts below.—3 *Hallam's Constit. Hist.*; consult *Macqueen's Pactice of the House of Lords*.

By the Judicature Act, 1873, s. 20, the jurisdiction of the House of Lords as the final Court of Appeal was taken away; but the operation of this section was suspended by the Judicature Act, 1875, s. 2, until the 1st November, 1876, and by the Appellate Jurisdiction Act, 1876, the appellate jurisdiction was restored. See APPELLATE JURISDICTION.

Householder [*paterfamilias*, Lat.], an occupier of a house; a master of a family.

House-tax. See HOUSE-DUTY.

Housing of Working Classes Acts. See LABOURERS' DWELLINGS, WORKING CLASSES.

Howe, a hill.—*Co. Litt.* 5 *b*.

Howgh, a valley.—*Ibid.*

Hredige, readily, quickly.—*Leg. Athelstan.* c. 16.

Hudegeld. See HIDGELD.

Hue and Cry [fr. *huer*, Fr., to shout; *crier*, to cry aloud; *hutesium et clamor*, Lat.], the old common law process of pursuing with horn and voice felons and such as have dangerously wounded another. It may be raised by constables, or private persons, or both. If the constable or peace officer concur in the pursuit, he has the same powers, etc., as if acting under a magistrate's warrant. All who join in a hue and cry, whether a constable be present or not, are justified in the apprehension of the person pursued, though it turn out that he is innocent; and where he takes refuge in a house, may break open the door, if admittance be refused; and by the Sheriffs Act, 1887, 50 & 51 Vict. c. 55, re-enacting 3 Edw. I. c. 9, 'Every person in a county must be ready and apparelled at the command of the sheriff, and at the cry of the country to arrest a felon,' and in default 'shall on conviction be liable to a fine.' But if a man wantonly or maliciously raise a hue and cry, he is liable to fine and imprisonment, and to an action at the suit of the party injured. The 7 Geo. IV. c. 64, s. 28, provides for compensation and expenses in such cases, in order to encourage the apprehension of felons.—4 *Bl. Com.* 293, and 4 *Steph. Com.* As to the mode of raising the hue and cry, see *Hawk.* l. 2, c. xii., s. 6. The term is also applied to a paper circulated by order of the Secretary of State for the Home Department, announcing the perpetration of offences.

Huisserium, a ship used to transport horses. Also termed *uffer*.

Huissier, an usher of a court.—*Cowel.*

Hulka, a hulk, or small vessel.—*Cowel.*

Hullus, a hill.—*Cowel.*

Humagium, a moist place.—*Mon. Angl.*

Hundred, a subdivision of the county, the nature of which is not known with certainty. In the *Dialogus de Scaccario*, it is said that a hundred '*ex hydarum aliquot centenariis, sed non determinatis constat; quidam enim ex pluribus, quidam ex paucioribus constat.*' Some accounts make it consist of precisely a hundred hides: others, of a hundred tithings, or of a hundred free families. Certain it is that whatever may have been its original organisation, the hundred, at the period

when it became known to us, differed greatly as to extent in the several parts of England. This division is ascribed to King Alfred, and he may possibly have introduced it into England, though in Germany it dates from a very remote period, where it was established among the Franks in the sixth century. In the capitularies of Charlemagne we meet with it in the form known among us.—*Capit.* l. 3, c. x. See HUNDREDORS.

Hundred Court, a larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors were here also the judges, and the steward the registrar, as in the case of a court-baron. It was not a court of record; it resembled a court-baron in all points except that in point of territory it was of a greater jurisdiction. It was denominated *hæreda* in the Gothic constitution. Causes were removed by the same writ as from a court-baron, and its proceedings might be reviewed by writ of false judgment. The court is become obsolete, but the County Courts Act, 1888, s. 6, re-enacting s. 14 of the County Courts Act, 1846, still treats it as existing, by providing for the surrender of the right to hold it.

Hundred-facta, the performance of suit and service at the hundred-court.

Hundred-fetena, dwellers or inhabitants of a hundred.

Hundred-lagh or **Hundred-law**, a hundred Court.

Hundred-penny, the *hundredfeh*, or tax collected by the sheriff or lord of a hundred.

Hundredes earldor, Hundredes man [*alder mannus hundreti*], the presiding officer in the hundred-court.—*Anc. Inst. Eng.*

Hundredors, men of a hundred.

Until 1886 hundredors were liable for damages done by rioters, under 7 & 8 Geo. IV. c. 31, which superseded all the prior statutes (repealed by 7 & 8 Geo. IV. c. 27) relative to such liability. But the Riot Damages Act, 1886, 49 & 50 Vict. c. 38, has transferred the liability to 'police districts.' See RIOT DAMAGES.

Hurdereferst, a domestic; one of a family.

Hurdle, a sledge used to draw traitors to execution, disused by operation of 33 & 34 Vict. c. 23, s. 31.

Hurst, Hyrst, Herst, Hirst, a wood or grove of trees.—*Co. Litt.* 4 *b.*

Hurtardus, Hurtus, a ram, or wether.

Husband of a Ship. See SHIP'S HUSBAND.

Husband and Wife. The *common law* treated them, for most purposes, as one person, giving, with exceptions comparatively unimportant, the whole of a woman's property to her husband for his absolute use, and a husband could not make a grant to his wife at the common law, though he might do so: (1) under the Statute of Uses, by granting an estate to another person for her use; (2) by creating a trust in her favour; (3) by the custom of particular places; (4) by surrendering copyholds to her use; and (5) by will.

Equity, however, from very early times, by the doctrines of 'separate uses,' 'trusts,' and 'equity to a settlement,' very largely modified the common law in favour of the wife; and the *statute law*, first in 1870 and afterwards in 1882, has, by the 'Married Women's Property Acts,' almost completely abolished the *property* distinction between an unmarried and a married woman. See MARRIED WOMEN'S PROPERTY.

The general rule is that a husband is not bound by his wife's *contracts*, unless made by his authority express or implied. If any articles are supplied to the wife which are not necessaries, the legal presumption is that the husband did not assent to his wife's contract. In the case of necessaries, where a husband neither does nor assents to any act to show that he has held out his wife as his agent to pledge his credit for goods supplied on her order, the question whether she bought the necessaries as his agent is one of fact, and the mere fact of cohabitation does not raise a presumption of agency. So held by the House of Lords in *Debenham* v. *Mellon*, 6 *App. Cas.* 24.

Ante-nuptial debts are provided for by sections 13—15 of the Married Women's Property Act, 1882, which enact that a wife is to continue liable for such debts to the extent of her separate property, but that a husband is liable for them to the extent of property acquired by him from his wife, and that the husband and wife may be jointly sued in respect of any such debts.

Proceedings against each other in connection with the rights of marriage are regulated by the Matrimonial Causes Acts. See MATRIMONIAL CAUSES. Proceedings of husband and wife against each other in respect of property are regulated by the 12th, 16th, and 17th sections of the Married Women's Property Act, 1882. The 12th section enacts that 'every married woman shall have against all persons, including her husband, the same civil and (unless they be living together or the act complained of took place when they were living together) criminal remedies for the protection of her separate property, as if she were unmarried,' but that, 'except as aforesaid, no husband or wife shall be entitled to sue the other for a tort'; the 16th section, that 'a wife doing any act with re-

spect to the property of her husband which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife, shall in like manner be liable to criminal proceedings by her husband; and the 17th section, that questions arising between husband and wife as to property may be decided in a summary way (privately, if either party so require) by a judge of the High Court, or (at the option of the applicant irrespectively of the amount in dispute) by the judge of the County Court of the district in which either party resides.

As to *criminal* law, if a wife commit a felony, except treason, or murder, or manslaughter, in her husband's presence, the law presumes that she acted under his coercion and excuses her, which presumption may be rebutted by evidence; while if in the absence of her husband she commit the felony—even by his order—her coverture is no excuse.

As to maintenance of the wife by the husband under the *poor law*, by 5 Geo. I. c. 8, a husband running away and leaving wife or children chargeable to a parish is liable to have his goods seized and sold to pay for their maintenance; and by the Poor Law Amendment Act, 1868, 31 & 32 Vict. c. 122, s. 33, when a married woman requires relief from the poor rates without her husband, an order may be made upon the husband by justices in Petty Sessions to maintain his wife by paying towards the cost of her relief such sum, weekly or otherwise, in such manner and to such persons as shall appear to the justices to be proper. Payments under this Act, however, can only be made to the wife as a pauper; and a more liberal scale, which may rise as high as 2*l.* per week, may be given by justices to a deserted wife under the Married Women (Maintenance in Case of Desertion) Act, 1886, 49 & 50 Vict. c. 52. The maintenance of the husband by the wife out of her separate property is provided for by the 20th section of the Married Women's Property Act, 1882, which incorporates *mutatis mutandis* the 33rd section of the Poor Law Act, 1868.

At common law the husband was (as laid down by Coleridge, J, in 1840, in *ex parte Cochrane*, 8 *Dowl.* 630) until 1891 considered to have a right to the personal custody of his wife; but in 1891 the Court of Appeal, in *Reg.* v. *Jackson* [1891], 1 *Q. B.* 671, disregarded this and all authorities and dicta pointing in this direction (see, e.g., the dictum of Lord Mansfield in *Reg.* v. *Mead*, 2 *Kenyon*, at p. 280), and, reversing the judgment of *Cave and Jeune, JJ.*, in the High Court, discharged a wife from the custody of her husband, who had seized her by force upon her refusal to live with him in compliance with a decree for restitution of conjugal rights.

Consult *Lush on Husband and Wife*; *Eversley on the Domestic Relations*; and see ALIMONY; MARRIED WOMEN'S PROPERTY; and MATRIMONIAL CAUSES.

Husbandry, farming,

Husbrece, burglary.—*Blount.*

Huscans, buskins.—4 *Edw. IV.* c. 7.

Huscarle, a menial servant.—*Domesday.*

Husfastne, he who holds house and land. —*Bract.* l, 3, t. 2, c. 10.

Husgable, house rent or tax.—*Mon. Angl.* iii. 254.

Hush-money, a bribe to hinder information; pay to secure silence.

Husting [fr. *hus-thing*, A.-S.], council, court, tribunal; apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The County Court in the city of London bore this name. There were hustings at York, Winchester, Lincoln, and in other places, similar to the London hustings.—*Madox, Hist. Excheq.* c. xx. Also the raised place from which candidates for seats in Parliament, prior to the Ballot Act, 1872, addressed the constituency on the occasion of their public oral nomination, and from which a show of hands was taken by the returning officer.

Hutesium et clamor (*hue and cry*). See HUE AND CRY.

Hutilan, taxes.—*Mon. Angl.* i. 586.

Hwata Hwatung, augury, divination.—*Ano. Inst. Eng.*

Hybernagium, the season for sowing winter corn, between Michaelmas and Christmas. See IBERNAGIUM.

Hyd, hide, skin. See HIDE-GILD.

Hyd, a measure of land, containing, according to some, a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccario*. It seems, however, that the hide varied in different parts of the kingdom. See HIDE OF LAND; HIDAGE.

Hynden, an association of ten men, first mentioned in *In.* 54, where it signifies the person from among whom the consacramentals were to be chosen in the case of deadly feud. From *Ath.* V. iii. it appears that the members of the 'first-guilds' (*congildones*) were formed into associations of ten, the enactment running thus: 'That we count ten men together, and let the senior direct the nine in all these things that are to be done; and then let them count their hyndens together, with one hynden-man, who shall admonish the ten (i.e., the ten hyndens) for

our common benefit.' Hence it would seem that the eleven who are to hold the money consisted of the senior of each hynden, together with the hynden-man who presided over the hynden of the hyndens, i.e., ten hyndens. The number XII. mentioned in *Ath.* V. viii. 1, is apparently an error for XI. —*Anc. Inst. Eng.*

Hypobolum, a legacy to a wife above her dower.—*Civ. Law.*

Hypothec, in the law of Scotland, is a security established by law in favour of a creditor over the property of his debtor; in the case of a landlord to whom rent is owing it is restricted, as to the right to agricultural produce, by 30 & 31 Vict. c. 42, and abolished, as to the rent of land exceeding two acres in extent, let for agriculture or pasture, *not being due, or to become due under any lease, writing, or bargain current* on the 11th November, 1881, by the Hypothec Abolition (Scotland) Act, 1880, 42 Vict. c. 12.

Hypothecation [fr. *hypotheca*, Civ. Law, a pledge in which the pledger retained possession of the thing pledged, as distinguished from *pignus*, where the possession was transferred to the pledgee. See *Sand. Just.*, 7th ed., li., 331, 436; *Smith's Dict. of Antiq.*, tit. 'Pignus'], the act of pledging a thing as security for a debt or demand without parting with the possession. There are few cases, if any, in our law, where an hypothecation in the strict sense of the Roman law exists. The nearest approaches, perhaps, are the cases of holders of bottomry bonds, and of seamen to whom wages are due in the merchant service, who have a claim against the ship *in rem*. But these are rather cases of liens or privileges than strict hypothecations. There are also cases where mortgages of chattels are held valid, without any actual possession by the mortgagee, but they stand upon very peculiar grounds, and may be deemed exceptions to the general rule.

Hypotheque, the right acquired by the creditor over the immovable property which has been assigned to him by his debtor as security for his debt, although he be not placed in possession of it.—*Fr. Law.*

Hyrnes [*parochia.* Lat.], parish.

Hythe, a port or little haven at which to lade or unlade wares.

I.

Ibernagium [fr. *hibernagium*, Lat.], the season for sowing winter corn.—*Cart. Antiq. MSS.*

Ibidem, Ibid., Id. [Lat.], (*in the same place or case*).

Iceni, the ancient name for the people of Suffolk, Norfolk, Cambridgeshire, and Huntingdonshire.

Icona, a figure or representation of a thing.—*Du Cange.*

I-ctus, an abbreviation of jurisconsultus, a lawyer.

Ictus orbus, a maim, bruise, or swelling; a hurt without cutting the skin.—*Cowel.*

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum. 9 Co. 47.—(That is certain which can be reduced to a certainty, but that is more certain which is certain on the face of it.)

Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpâ est (aut jubet). 3 Inst. 158.—(To commit, and not to prohibit when in your power, is the same thing; and he who does not prohibit when he can prohibit, is in fault, or does the same as ordering it to be done.)

Idem est non esse et non apparere. Jenk. Cent. 207.—(Not to be and not to appear are the same.)

Idem semper antecedenti proximo refertur. Co. Litt. 685.—('The same' is always referred to its next antecedent.)

Idem sonans (*sounding alike*). The Courts will not set aside proceedings on account of the misspelling of names, provided the variance is so trifling as not to mislead, or the name as spelt be *idem sonans*, as Lawrance instead of Lawrence, Reynell for Reynolds, Beneditto for Benedetto.—1 *Cromp. and M.* 806; 6 *Price*, 2; 2 *Taunt.* 401.

Idem per idem, an illustration of a kind that really adds no additional element to the consideration of the question.

Identitas vera colligitur ex multitudine signorum. Bacon.—(True identity is collected from a multitude of signs.)

Identitate, or **Idemptitate nominis**, an ancient and obsolete writ that lay for one taken and arrested in any personal action, and committed to prison for another man of the same name.—*F. N. B.* 267.

Identity. The being the same person or thing as represented or believed to be. See PERSONATION.

Ides [fr. *iduare*, obs. Lat., to divide], a division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month, in the remaining months on the 13th.—*Smi. Clas. Antiq.* This method of reckoning is still retained in the Chancery of Rome, and in the calendar of the Breviary. See NONES.

Idiot. An idiot is a person born without a mind; a lunatic is a person who has lost it. As a general rule, the status of either

is the same in law, but there are two exceptions.

1. In the case of a lunatic, the Crown is but a trustee of his estate, but in the case of an idiot the Crown is absolutely entitled to the profits during the life of the idiot subject to the idiot's maintenance; but persons are seldom found idiots, but only *non compotes mentis*; and even when they are, the Crown now never claims its right in their property.

2. The admission of idiots to licensed houses and their detention therein and discharge therefrom is to a great extent regulated by a separate 'Idiots Act, 1886,' 49 & 50 Vict. c. 25, which, by s. 11, excludes the provisions of the Lunacy Acts as to the registration of such houses and other matters. And which is by s. 340 of the consolidating Lunacy Act, 1890, unaffected by that Act.

Idle and Disorderly Person, a person able to work and not maintaining his family, whereby such family becomes chargeable to any parish; an unlicensed pedlar; a prostitute behaving improperly in any place of public resort; a person placing himself to beg in any public place, or encouraging any child so to do. Any such person may, on conviction, be imprisoned with hard labour for not more than a month. See 5 Geo. IV. c. 85, and VAGRANT.

Idoneum se facere; idoneare se, to purge one's self by oath of a crime of which one is accused.

Idoneus homo (*a proper man*). He is legally said to be *idoneus homo* who has honesty, knowledge, and ability.

Id possumus quod de jure possumus. Lane, 116.—(We may do only that which by law we are allowed to do.)

Id, quod nostrum est, sine facto nostro ad alium transferri non potest. D. 50, 17, 11.—(That which is ours cannot be transferred to another without our act.)

Ignis judicium, the old judicial trial by fire.—*Blount.*

Ignitegium [fr. *ignis*, Lat., fire, and *tego*, to cover], the curfew.—*Encyc. Lond.*

Ignoramus (*we are ignorant*). The word formerly written on a bill of indictment by a grand jury when they rejected it; the phrase now used is 'not a true bill,' or 'not found'; or the jury are said to 'ignore' the bill.

Ignorantia eorum quæ quis scire tenetur non excusat. Hale's Pl. Cr. 42.—(Ignorance of those things which one is bound to know, excuses not.)

Ignorantia facti excusat, ignorantia juris non excusat. 1 Co. 177.—(Ignorance of the fact excuses; ignorance of the law excuses not.) Therefore, 1st, money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable if there be nothing against conscience in retaining it; and 2ndly, money paid in ignorance of the facts is recoverable, provided there have been no laches in the party paying it. In criminal cases this maxim applies, as where a man thinks he has a right to kill a person excommunicated or outlawed wherever he meets him and does so, this is murder. But a mistake of fact is an excuse, as where a man intending to kill a thief or housebreaker in his own house by mistake kills one of his own family this is no criminal action.—4 *Bl. Com.* 27.

Ignorantia juris, quod quisque scire tenetur, neminem excusat. 2 Rep. 3 *b.*—(Ignorance of the law, which every one is held to be cognisant of, excuses no one.) See *supra.*

Ignoratio elenchi, an overlooking of the adversary's counterposition in an argument.

Ignoratis terminis ignoratur et ars. Co. Litt. 2.—(The terms being unknown, the art also is unknown.)

Ignore, to throw out a bill of indictment.

Ikenild Street. See HIKENILDE STREET.

Ilet, a little island.

Illegal conditions, all those that are impossible, or contrary to law, immoral, or repugnant to the nature of the transaction. See CONDITION.

Illegal considerations. See CONSIDERATION.

Illegal contract, an agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law.

Illegal contracts have been divided into

1st. Contracts which violate the Common Law; subdivided into—

(α) Contracts void on account of fraud, which may be either

(a) Misrepresentation.
(b) Concealment.

(β) Contracts void on account of immorality.

(γ) Contracts in violation of public policy, which may be—

(a) In restraint of trade.
(b) In restraint of marriage.
(c) Marriage-brokerage contracts.
(d) Contracts for wages.
(e) Contracts to offend against law, etc.
(f) Trading with an enemy without license.

2nd. Contracts which violate any statutory provisions.—*Story on Contracts*, 102.

Illegitimacy. See BASTARD.

Illeviable, a debt or duty that cannot or ought not to be levied.

Illicit, unlawful, as an illicit sale of intoxi-

cating liquor by retail; e.g., without license, in contravention of s. 3 of the Licensing Act, 1872.

Illicite, unlawfully.

Illicitum Collegium (*an illegal corporation*).

Illocable, incapable of being placed out or hired.—*Bailey.*

Illud, quod aliàs licitum non est, necessitas facit licitum; et necessitas inducit privilegium quoad jura privata. Bac. Max.—(That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.)

Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet. Godolph Rep. Can. 169.—(That which is united to another is extinguished, nor can it be any more independent.)

Illusory Appointment Act, 1 Wm. IV. c. 46. This statute enacts that no appointment made after its passing (July 16, 1830), in exercise of a power to appoint property, real or personal, among several objects, shall be invalid, or impeached in Equity, on the ground that an unsubstantial, illusory, or nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in Equity as at Law. See, too, 37 & 38 Vict. c. 37.

Illustrious, the prefix to the title of a prince of the blood.

Iman, **Imam**, or **Imaum**, a Mohammedan prince having supreme spiritual as well as temporal power; a regular priest of the mosque.

Imbargo. See EMBARGO.

Imbasing of money, mixing specie with an alloy below the standard of sterling.—1 *Hale's P. C.* 102.

Imbezzle. See EMBEZZLE.

Imbracery. See EMBRACERY.

Imbrocus, a brook, gutter, or water-passage.—*Cowel.*

Immaterial averment, an unnecessary statement. See IMPERTINENCE.

Immaterial issue, an issue upon a point or ground which will not decide the action, See ISSUE.

Immediately, in a statute, within reasonable time. See *Maxwell on Statutes*, 2nd ed., 423.

Immemorial usage, a practice which has existed time out of mind; custom; prescription. See MEMORY, TIME OF LEGAL.

Immoral contracts, contracts founded upon considerations *contra bonos mores*, are void. *Ex turpi contractu non oritur actio.* But where a contract founded upon an immoral consideration has been executed, neither Law nor Equity will interfere to set it aside if both parties have been equally in fault, for *in pari delicto, potior est conditio defendentis.*

Yet, a *sealed* contract, made in consideration of *past* seduction or cohabitation, can be enforced; not because it is binding in honour and conscience, for such a reason is not sufficient, but because a specialty imports a consideration which, unless illegal, both parties are estopped from denying. A covenant to pay money in consideration of future cohabitation is void, though under seal.—1 *Vern.* 483; 2 *Wils.* 339.

Immovable, not to be forced from its place, the characteristic of things real, or land.

Immunity, exemption.

Impalare, to put in a pound.—*Du Cange.*

Impanel, or **Impannel**, the writing and entering of the names of a jury in a parchment schedule by the sheriff.

Impargamentum, the right of impounding the cattle.

Imparl, to have license to settle a litigation amicably, to obtain delay for adjustment.

Imparlance [fr. *licentia loquendi*, Lat.], time to plead; also when a Court gives a party leave to answer or plead at another time, without the assent of the other party. Abolished by r. 31 T. T. 1853. And see 2 Wm. IV. c. 39.

Imparsonee, a clergyman inducted into a benefice. See INDUCTION.

Impatronization, the act of putting into full possession of a benefice.

Impeachment, a prosecution by the House of Commons before the House of Lords of a commoner for treason, or other high crimes and misdemeanours, or of a peer for any crime; in modern times rarely been resorted to, though in former periods of our history of frequent occurrence. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

As to the mode of proceedings see *May's Parliamentary Practice.*

Impeachment of waste. See ABSQUE IMPETITIONE VASTI.

Impechiare, to impeach, to accuse, or prosecute for felony or treason.

Impediatus. See EXPEDITATE.

Impediens, a defendant or deforciant.

Impedimentum dirimens, 'cause or impediment' to marriage, which is not removed by the actual solemnization of the rite, but continues in force and makes the marriage null and void (opposed to *impedimentum impediens*). See *Sanchez de matrimonio, Lib.* 7, *Disputatio* 6.

Imperfect obligations, moral duties, such as charity, gratitude, etc., which cannot be enforced by law.

Imperfect trust, an executory trust, which see; and see EXECUTED TRUST.

Imperial. Pertaining to the whole empire as distinguished from the United Kingdom only (see the Imperial Defence Act, 1888), or to the United Kingdom as distinguished from parts of that kingdom, as where it is said that Local Government may weaken Imperial control.

Imperitia culpæ annumeratur. Jur. Civ. —(Want of skill is reckoned as a fault.)

Imperitia est maxima mechanicorum pœna. 11 Co. 54.—(Unskilfulness is the greatest fault of mechanics.)

Imperium, right to command, an attribute of executive power.

Impersonalitas non concludit nec ligat. Co. Litt. 352 *b.*—(Impersonality neither concludes nor binds.)

Impertinence, where the pleadings in Chancery were encumbered with long recitals, or with lengthy, unnecessary, and immaterial digressions, as where a deed was stated which was not prayed to be set forth, *in hæc verba.* The practice of excepting to bills, answers, etc., for impertinence was some time ago abolished, but the Court might, upon application, direct the costs occasioned by any impertinent matter in any proceeding to be paid by the party introducing it.—15 & 16 *Vict.* c. 86, s. 17. By R. S. C. 1883, Ord. XIX., r. 23, any unnecessary or scandalous pleading may be struck out by order of the Court or a Judge. See *Millington* v. *Loring,* 9 *Q. B. D.* 190.

Impescatus, impeached or accused.—*Jacob.*

Impetitio. See IMPEACHMENT.

Impetration, acquiring anything by request and prayer.—*Cowel.* See 38 Eliz.

Impier, umpire, which see.

Impierment, impairing or prejudicing.—*Jacob.*

Impignoration, the act of pawning or putting to pledge.

Implead, to sue or prosecute.

Implicata [Ital.]. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent., to which they are entitled at all events, even if the adventure be lost.—*Merc. Law.*

Implication, a necessary or possible inference, of something not directly declared.

Implied condition. See CONDITION.

Implied contract. See CONTRACT.

Implied trusts. An implied trust arises generally from an equitable construction put upon the facts, conduct, or situation of parties.

Implied trusts have been distributed into two classes: (1) those depending upon the presumed intent of the parties, as where property is delivered by one to another to be handed over to a third person, the receiver holds it upon an implied trust in favour of such third person; (2) those not depending upon such intention, but arising by operation of law, in cases of fraud, or notice of an adverse equity.

A trust of this kind arises wherever the estate is converted by the trustee from one species of property into another; for if the property, in its original form, were invested with a trust, the *cestui que trust's* interests cannot be affected by any change of that form: and whether the conversion be in pursuance or in breach of the trustee's duty, is immaterial; for an abuse of trust cannot confer any right on the party abusing it, or on those who claim in privity with him.

Implied use. See RESULTING USE.

Implied warranty. See WARRANTY.

Importation, the bringing goods and merchandise into this country from other nations.

Imports, goods or produce brought into a country from abroad.

Imposition, tax, contribution.

Impossibility. If a man contract to do a thing which is absolutely impossible such contract will not bind him: but where the contract is to do a thing which is possible in itself, but which becomes impossible, will be liable for the breach. See *Addison, Chitty, or Leake on Contracts.*

Impossibilium nulla obligatio est. D. 50, 17, 185.—(There is no obligation to do impossible things.) See IMPOSSIBILITY.

Impost [fr. *impôt,* Fr.; *impositum,* Lat.], any tax or tribute imposed by authority; particularly by a tax or duty laid by Government on goods imported.

Impotence, physical inability of a man or woman to perform the act of sexual intercourse. A marriage is void if, at the time of the celebration, either of the parties to it is incurably impotent, and may be declared void by a decree in a suit of nullity of marriage. See NULLITY OF MARRIAGE.

Impotentiam, propter, Property, a qualified property, which may subsist in animals *feræ naturæ,* on account of their inability, as where hawks, herons, or other birds, build in a person's tree, or coneys, etc., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires.—2 *Steph. Com.,* bk. ii., ch. i.

Impound (*v.a.*), to place a suspected document in the custody of the law, when it is produced at a trial. By the 'Bills of Ex-

change Act, 1855' (18 & 19 Vict. c. 67), s. 4, a judge may order a bill or note sought to be proceeded upon, to be forthwith impounded. Also see next Title.

Impounding cattle, etc. Placing cattle, etc., after they have been distrained, in a safe place for custody, which safe place may, in the case of distress upon a tenant for rent, be on the demised premises themselves.—11 *Geo. II.* c. 19, s. 10; 12 & 13 *Vict.* c. 92, s. 5.

Imprescriptable right, such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

Impression. See PRIMÆ IMPRESSIONIS.

Impressing men, compelling persons to serve in the navy. This practice is allowed at Common Law (see *ex parte Fox*, 5 *T. R.* 277), and was extensively followed until 1815, when it began to be gradually abandoned for the recruiting by voluntary enlistment, which has now entirely displaced it. The practice is still clearly legal, and is recognised impliedly by 5 & 6 Wm. IV. c. 24, which, however, provides that no person shall be detained in the royal navy, against his consent, for a longer period than five years, except in case of emergency. See also 16 & 17 Vict. c. 69, which, perhaps, has the effect of limiting the liability to serve to seafaring men.

Imprest money, money paid on enlisting soldiers or sailors.

Impretiabilis, invaluable.—*Mat. Paris.*

Imprimatur, a license to print or publish.

Imprimery, a print or impression.—*Jacob.*

Imprimis (*in the first place*).

Imprisii, adherents or accomplices.—*M. Par.* 127.

Imprisonment, the restraint of a person's liberty under the custody of another. It extends to confinement not only in a gaol, but in a house, or stocks, or to holding a man in the street, etc.; for in all these cases the person so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business as at other times.—*Co. Litt.* 253. By the Debtors Act, 1869, 32 & 33 Vict. c. 62, imprisonment for 'making default in payment of a sum of money' has been abolished except in certain cases, of which the more important are, default in payment of a penalty, not in respect of contract, default in payment of sums recoverable before a justice of the peace, and default by trustees or solicitors after order to pay; but in such cases the duration of imprisonment is not to exceed one year. The Act, however, gives any court a power of committal on default of payment when the party has the means of paying, and, if the court be an inferior one, when the debt does not exceed 50*l.*, but no such committal is to operate as a satisfaction or extinguishment of the debt (s. 5). As to Ireland see the 35 & 36 Vict. c. 57.

Impristi, those who side with or take the part of another, either in his defence or otherwise.

Improbation, the disproving or setting aside of deeds and writings *ex facie* probative on the ground of falsehood or forgery.—*Bell's Scotch Law Dict.*

Improper feuds, derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honourable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to males or females.

Impropriation, the act of employing the revenues of a church-living to a layman's use. See APPROPRIATION and LAY IMPROPRIATOR.

Improvement Act District. Defined by the Public Health Act, 1875, s. 4, as 'any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local act with powers of town government and rating.'

Improvement of Land. The improvement of Lands Act, 1864, 27 & 28 Vict. c. 114, enumerates (sect. 9) as 'improvements' within the Act the following:—(1) Drainage; (2) Irrigation and Warping; (3) Embanking from the sea, etc.; (4) Inclosing, and re-division of fields; (5) Reclamation; (6) Making roads, tramways, railways, and canals; (7) Clearing; (8) Erection and improvement of cottages and farm buildings; (9) Planting for shelter; (10) Construction of mills, etc., etc.; (11) Construction of landing places; and allows tenants for life to charge the cost of such improvements upon the fee of a settled estate with the sanction of the Inclosure Commissioners, after notice to persons in remainder, and certain specifications and surveys;—the sanction of the Commissioners to be given 'if they find (sect. 25) that the improvements would effect a permanent increase of the yearly value of the lands proposed to be improved.'

The Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 25, greatly extends the powers of a tenant for life to make improvements, by allowing him to *sell* the settled land and execute improvements, being for the benefit of the settled land, out of the 'capital trust money' realised by the sale, the improvements authorised being those mentioned in the Improvement of Lands Act, with considerable additions.

Mansion-houses, by 34 & 35 Vict. c. 84

works for supply of sewage for agricultural purposes, by Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 31; and reservoirs, by 40 & 41 Vict. c. 31, s. 5, are also 'improvements' within the Improvements of Lands Act, 1864. See also DRAINAGE.

Improvement of Towns. The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, 'comprises in one Act sundry provisions usually contained in' special Acts of Parliament theretofore passed 'for *paving, draining, cleansing, lighting, and improving* towns and populous districts,' to avoid the necessity for repeating such provisions in each special Act, and to ensure greater uniformity in the provisions themselves.

Of this Act sections 64—83, which relate to the naming of streets and numbering of houses, to the improving the line of streets and removal of obstructions, to the securing or demolition of ruinous buildings, and to the taking precaution during the erection of works; and sections 125—131, which relate to slaughter-houses, are incorporated with the Public Health Act, 1875, by ss. 160, 169, of that Act. See PUBLIC HEALTH.

Improvement, Agricultural, Compensation to Tenant for. The Agricultural Holdings Act, 1883, ensures compensation to agricultural tenants upon quitting their holdings for certain improvements executed upon their holdings, during occupation. The improvements are divided into three classes, according as they: (1) require the consent of the landlord; (2) require notice to the landlord; or (3) require neither such consent nor notice. In the first class are, amongst others, buildings, ensilage, and laying down permanent pasture; in the second, drainage only; and in the third, amongst others, 'boning,' 'liming,' or 'marling' of land; and application to land of purchased 'artificial or other purchased manure,' and 'consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.' The right to the compensation, which is payable in accordance with the value of the improvement to an incoming tenant, cannot (see s. 55 of the Act) be taken away by any contract whatever.

In some parts of England and Wales 'customs of the country,' more or less liberal, but founded on no definite principle, ensure compensation to the tenant on quitting his holding for improvements executed thereon during his occupation. Such compensation is in theory payable by the landlord in every case, but is in practice generally paid by a succeeding tenant. It is clear law, however, that the outgoing tenant has an absolute right to be paid by the landlord, and not merely a right conditional upon there being an incoming tenant (*Faviell* v. *Gaskoin*, 7 *Ex.* 273).

Impruiamentum, the improvement of land.

Impruiare, to improve land.—*Cowel.*

Impunitas continuum affectum tribuit delinquendi. 4 Co. 45.—(Impunity confirms the disposition to commit crime.)

Impunitas semper ad deteriora invitat. 5 Co. 109.—(Impunity always invites to greater crimes.)

Imputatio [Lat.], legal liability.—*Civ. Law.*

In ædificiis lapis male positus non est removendus. 11 Co. 69.—(A stone badly placed in buildings is not to be removed.)

In æquali jure melior est conditio possidentis. Plow. 296.—(In equal right the condition of the possessor is best.)

Inalienable, not transferable.

In alio loco [Lat.] (*in another place*).

In altâ proditione nullus potest esse accessorius sed principalis solummodo. 3 Inst. 138. —(In high treason no one can be an accessory, but only principal.)

In alternativis electio est debitoris.—(In alternatives the debtor has the election.)

In ambiguâ voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit. D. 1, 3, 19; Bac. Max. reg. 3.—(In an ambiguous expression of law that signification is to be preferred which is consonant with equity, especially when the spirit of the law can be collected from that.)

In ambiguis casibus semper præsumitur pro rege.—(In doubtful cases the presumption is always in favour of the king.)

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. D. 50, 17, 96.—(In ambiguous expressions the intention of the person using them is chiefly to be regarded.)

In Angliâ non est interregnum. Jenk. Cent. 205.—(In England there is no interregnum.)

In arbitrium judicis.—(At the pleasure of the judge.)

In articulo mortis [Lat.] (*at the point of death.*)

In atrocioribus delictis punitur affectus licet non sequatur effectus. 2 Roll. Rep. 82.—(In more atrocious crimes the intent is punished, though an effect does not follow.)

Inauguration, the act of inducting into office with solemnity, as the coronation of the sovereign, or the consecration of a prelate.

In auter, or **autre, droit** (*in another's right*).

In banco, or **banc, Sittings.** See BANC.

Inbound Common, an unenclosed common, marked out, however, by boundaries.

In Camera. See CAMERA.

Incastellare, to make a building serve as a castle.—*Jacob.*

In casu extremæ necessitatis omnia sunt communia. H. P. C. 54.—(In cases of extreme necessity everything is in common.)

Incaustum, or **Encaustum**, ink.—*Fleta*, l. 2, c. xxvii., p. 5.

Incendiary. See ARSON.

Incerta pro nullis habentur. Dav. 33.—(Things uncertain are reckoned as nothing.)

Incerta quantitas vitiat actum. 1 Rol. Rep. 465.—(An uncertain quantity vitiates the act.)

Incest, carnal knowledge of persons within the Levitical degrees of kindred, at one time a capital offence (4 *Bl. Com.* 65); but afterwards left to the action of the spiritual courts. —4 *Steph. Com.*

Inchartare, to give, or grant, and assure anything by a written instrument.—*Mat. Par.*

In chief. See EXAMINATION.

Inch of candle, a mode of sale at one time in use among merchants; the goods to be sold were divided into lots, and at the sale a small piece of candle, about an inch long, was kept burning, and the last bidder, when the candle went out, was entitled to the lot for which he bid.

Inchoate, begun, but not completed. By the Bills of Exchange Act, 1882, s. 20, 'a simple signature on a blank stamped paper,' delivered by the signer in order that it may be converted into a bill, 'operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser.'

Incident, a thing necessarily depending upon, appertaining to, or following another that is more worthy, as rent is incident to a reversion; and as a court-baron is incident to a manor.

Incipitur (*it is begun*). This was the technical commencement of a declaration, demurrer-book, judgment, etc.

Incised wounds, wounds inflicted with a sharp point or edge.

Incivile est, nisi totâ sententiâ inspectâ, de aliquâ parte judicare. Heb. 171.—(It is improper to judge of any part unless the whole sentence be examined.)

Incivism, unfriendliness to the state or government of which one is a citizen.

In claris non est locus conjecturis. (In things obvious there is no room for conjecture.)

Inclausa, a home-close, or inclosure near a house.

Inclosure Acts, 41 Geo. III. c. 109; 1 & 2 Geo. IV. c. 23; 6 & 7 Wm. IV. c. 115; 3 & 4 Vict. c. 31; 8 & 9 Vict. c. 118 (the principal Act); 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c 43; 25 & 26 Vict. c. 94; 26 & 27 Vict. cc. 18,—39; 27 Vict. c. 1; 27 & 28 Vict. c. 66; 28 Vict. c. 39; 29 & 30 Vict. c. 122; 31 & 32 Vict. c. 89; 36 & 37 Vict. c. 19. See *Cooke on Inclosures*; *Chitty's Statutes*, vol. iii., tit. '*Inclosure.*'

Inclosure Commissioners, officers appointed under Inclosure Acts. See LAND COMMISSIONERS.

Inclusio unius est exclusio alterius.—(The inclusion of one is the exclusion of another.)

Income tax, a tax of so much in the pound of income. The acts on this subject are very numerous. See *Chitty's Statutes*, vol. v., tit. '*Property Tax.*'

In commendam. See COMMENDAM.

Incommodum non solvit argumentum.—(An inconvenience does not destroy an argument.) See ARGUMENTUM AB INCONVENIENTI.

In conjunctivis oportet utramque partem esse veram. Wing. 13.—(In things conjunctive each part ought to be true.)

In consimili casu, consimile debet esse remedium. Hard. 65.—(In similar cases the remedy should be similar.)

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda. Co. Litt. 141.—(In customs, not the length of time but the strength of the reason should be considered.)

Incontinency, unlawful indulgence of the sexual passion.

In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. Co. Litt. 112.—(In contracts the interpretation is to be liberal; in wills more liberal; in restitutions, most liberal.)

In contractibus tacitè insunt quæ sunt moris et consuetudinis.—(Those things which are of manner and custom are tacitly imported into contracts.)

In conventionibus contrahentium voluntas potius quam verba spectari placuit. Br. Max., 6th ed., 509.—(In agreements, the intention of the parties, rather than the words actually used, should be regarded.)

Incopolitus, a proctor or vicar.

Incorporate. (1) To declare that another document shall be taken as part of the document in which the declaration is made as much as if it were set out at length therein; (2) To establish as a corporation by grant from the Crown or Act of Parliament.

Incorporated Law Society. Founded in 1825, and incorporated in 1831 by Royal Charter (surrendered for a new Charter in 1845, by which, as amended by Supplemental

Charter in 1872, the Society now (1891) remains constituted) 'to facilitate the acquisition of legal knowledge, and for better and more conveniently discharging the professional duties of the members of the Society,' under the full title of 'The Society of Attorneys, Solicitors, Proctors, and others not being Barristers practising in the Courts of Law and Equity of the United Kingdom,' and commonly called 'The Law Society.' The society first instituted lectures for students in 1833, and was constituted registrar of attorneys and solicitors in 1843 by 6 & 7 Vict. c. 73, s. 39.

Any solicitor may become a member on election by ballot, and on the payment of an annual subscription of 2*l.* for a London member and 1*l.* for a country member, but for country solicitors who are members of the Provincial Law Society of the district in which they practise, the annuals ubscription is only 10*s.* The present (1891) number of members is 6558, the present number of certificated solicitors being about 15,600. The affairs of the society are managed by a Council consisting of 50 members. An annual general meeting is held in London in July, and annual provincial meetings (the first of which was held at Leeds in 1874) are held in the country. There are also special general meetings in January and April. Papers affecting the interests of the legal profession are read and discussed at all the meetings.

The society is intrusted with the examination of all persons wishing to become solicitors. Courses of Lectures, supplemented in 1864 and 1879 by Law Classes, are delivered on (1) Common Law; (2) Equity; and (3) Conveyancing; members being admitted free, and non-members on payment of fees.

For non-members the terms of admission to the lectures are as follows:—

	The Three Courses.	Two Courses.	One Course.
	Guineas.	Guineas.	Guineas.
Clerks of members (whether articled or not)	3	2½	1½
Clerks of non-members (whether articled or not)	4	3	2
Other students . .	5	3½	2½

The subscription to the law classes in connection with the lectures is in all cases 2*l.* 12*s.* 6*d.* for each branch of instruction, or 5*l.* 5*s.* for the three branches: viz., Common Law, Equity, and Conveyancing.

The subscription to classes for articled clerks who have not passed the Intermediate Examination is as follows:—

	Classes on Tuesdays or Fridays.	All the Classes.
	Guineas.	Guineas.
Clerks of members . .	3	5
Clerks of non-members .	4	6
All other persons not being members . .	5	7

The Tuesday and Friday classes are the Elementary Law classes. Students who have attended the class held on Mondays for one year may attend the classes held on Fridays in the following year on payment of an additional fee of 2*l.* 2*s.*

The Library, of which there is a good printed catalogue, contains upwards of 30,000 volumes, including works on American, Colonial, and Foreign Law. Articled Clerks, under articles to members, may be admitted by order of the Council on payment of an annual subscription of 2*l.*

By the Solicitors Act, 1874, notice must be given to the society of applications for removal of solicitors from the roll.

By the Solicitors Act, 1888, s. 5, the society, as Registrar of Solicitors, has the custody of the Roll of Solicitors; and by ss. 12 and 13 of the same Act, an application to strike the name of a Solicitor off such Roll is made to and heard by a committee of the Council of the society in the first instance.

The Council of the society hold weekly meetings for considering all matters connected with their branch of the legal profession, and numerous statutory, standing, and special committees of the Council hold frequent meetings with the same object. Committees of the society are also from time to time appointed to inquire into and report on matters of general and professional interest. The Council are in frequent communication with the public authorities on such questions. They also examine Bills brought into Parliament, and make such remarks and suggestions as appear to them necessary. The society has long been active in supporting legal reforms, and is now usually referred to for suggestions and remarks on Bills affecting the principles or practice of the law, and upon all new rules and orders. Many reforms in law and practice have been promoted, and numerous Acts of Parliament initiated, by the society, which co-operates with the Bar Committee in matters of law and practice and

on questions affecting the relations between the two branches of the profession.

The Council are also frequently referred to on questions of professional practice and etiquette, and assist the members of the Society by giving information on new points of law or practice, and by obtaining judicial decisions on doubtful questions of general interest to solicitors. In connection with the Solicitors' Remuneration Act, 1881, and the General Order under that Act, they have supported numerous cases calling for judicial decision where the expense would have been too great to justify an appeal by the parties themselves, and for several years they have supplied to all the members of the society, free of charge, a digest of judicial decisions and of their own opinions on cases arising under the Order.

The society keeps a register of sales, mortgages, and moneys for investment, of which a private list is sent monthly to every member.

Incorporation, the formation of a legal or political body, with the quality of perpetual existence and succession, except so far as limited by the act of incorporation.

Incorporeal chattels, incorporeal rights incident to chattels, e.g., patent rights and copyrights.—2 *Steph. Com.*

Incorporeal hereditament. See HEREDITAMENT.

Increase, Affidavit of. Affidavit of payment of increased costs, produced on taxation. 'Of the costs of the pleadings, and the office fees of the proceedings, in the cause down to trial, the record will in general sufficiently inform the taxing master; but the amount of the costs of the trial, including the evidence and the subpœnaing of any payment to witnesses, counsel, and court fees, must be supported by affidavit, commonly called the *Affidavit of Increase.*'—For forms of affidavit see *Chitty's Forms*, and *Scott on Costs.*

Incrementum, increase or improvement, opposed to *decrementum* or abatement.

Incroachment [fr. *accroachment*, Fr., a grasping], an unlawful gaining upon the right or possession of another.

Incumbent, a clergyman in possession of an ecclesiastical benefice. As to resignation with pension see 34 & 35 Vict. c. 44, and as to provision by the Public Worship Regulation Act for the better administration of the laws 'relating to the performance of public worship, according to the use of the Church of England,' see PUBLIC WORSHIP REGULATION ACT, 1874.

Incumbrance, a claim, lien, or liability attached to property; as a mortgage, a registered judgment, etc.

Incurramentum, the liability to a fine, penalty, or amerciament.—*Cowel.*

In custodiâ legis [Lat.] (*in the keeping of the law*), a term used of goods which, from having been already seized by the sheriff under an execution, or are otherwise in the custody of the law, are exempt from distress for rent; but by 8 Anne c. 14, the sheriff may not take such goods in execution unless the party at whose suit the execution issued pay to the landlord his arrears of rent not exceeding one year's rent. If the goods are seized under a County Court warrant, the landlord's claim is satisfied, by virtue of s. 160 of the County Courts Act, 1888, up to 'the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case.'

Indebitatus assumpsit [Lat.] (*being indebted he undertook*), that species of the action of assumpsit in which the plaintiff first alleged a debt, and then a promise in consideration of the debt. Since the Judicature Acts, obsolete as a technical form of action. See PLEADING.

Indecent Assault. See 24 & 25 Vict. c. 100, ss. 52, 62.

Indecent exposure, an indictable offence at Common Law. Exposure of the person in or in view of any public street or place of resort, with intent to insult any female, is also an offence under the 'Vagrant Act' (5 Geo. IV. c. 83, s. 5). As to the punishment (fine or imprisonment), see 14 & 15 Vict. c. 100, s. 29.

Indecent prints or books. The sale, or obtaining or procuring of such prints, with intent to sell, is a misdemeanour. The 20 & 21 Vict. c. 83, gives summary powers for the searching of houses, etc., in which obscene books, etc., are suspected to be kept, and for the seizure and destruction of such books, etc.

Indecimable, not titheable.

Inde datæ leges ne fortior omnia posset. Dav. 36.—(The laws are made lest the stronger should be altogether uncontrolled.)

Indefeasible, not to be made void.

Indefensus, unanswered, in pleading.

Indefinite payment, where a debtor owes several debts to a creditor, and makes a payment, without specifying to which of the debts it is to be applied. See APPROPRIATION OF PAYMENTS.

Indemnity, a writing to secure one from all danger and damage that may ensue from an act or omission. An Act of Indemnity used to be passed in every session of Parliament for the relief of those who had neglected to take the necessary oaths of office, etc. (see e.g.,

30 & 31 Vict. c. 88, s. 1); but such Act is rendered unnecessary by 31 & 32 Vict. c. 72, s. 16.

By the 22 & 23 Vict. c. 35, s. 31, every deed, will, or other instrument creating a trust expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause for the indemnity of trustees to the effect therein specified. As to indemnity between sureties see GUARANTEE.

Indenization, the act of making free, or of naturalizing.

Indenture, a deed indented between two or more parties, so called because duplicates of every deed *inter partes* were once written on one skin. The skin was cut in half irregularly or with a jagged edge: so when the duplicates were produced in Court they were seen to belong to one another by fitting into one another. By 8 & 9 Vict. c. 106, s. 5, it is provided that a deed purporting to be an indenture shall have the effect of an indenture though not actually indented.

Index animi sermo.—(Speech is the exposition of the mind.)

India. In 1876, by 39 Vict. c. 6, Queen Victoria was empowered to add to the style of the Crown, with a view of recognising the transfer of the Government of India, and assumed the style in India, of 'Empress of India.'

Indian Councils Act, 1861, 24 & 25 Vict. c. 67. See also 32 & 33 Vict. c. 97, and 37 & 38 Vict. c. 91.

India Railways. See 31 & 32 Vict. c. 26, and 36 & 37 Vict. c. 43.

India Stocks, Acts for the Registration and Transfer of, 25 & 26 Vict. c. 7; 26 & 27 Vict. c. 73; 27 & 28 Vict. c. 50; and see 34 & 35 Vict. c. 29 as to dividends on such stocks.

Indian bishops. See COLONIAL CLERGY, and 37 & 38 Vict. c. 77, s. 13.

Indicatif, an abolished writ by which a prosecution was in some cases removed from a court-christian to the Queen's Bench.—*Encyc. Lond.*

Indicavit (*he has proclaimed*), a writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes which amount to a fourth part of the profits of the advowson, when the suit belongs to the Common Law Courts, by West. II. c. 5, 13 Edw. I. st. 4. The patron of the defendant is allowed this writ, as he is likely to be prejudiced in his church and advowson if the plaintiff recover in the spiritual court.—*Reg. Orig.* 55.

Indicia [Lat.], signs, marks.

Indicted, charged in an indictment with a criminal offience. See INDICTMENT.

Indictee, a person indicted.

Indictio, an indictment.

Indiction, Cycle of, a mode of conputing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. Some of the charters of King Edgar and Henry III. are dated by indictions.

Indictment [fr. *indico*, Lat., to show], a written accusation against one or more persons of a crime of a public nature, preferred to and presented upon oath by a grand jury. It lies against all persons (except those under incapacity, as lunatics, etc.) who actually commit or who procure and assist in the commission of crimes, or who knowingly harbour an offender; for each, in contemplation of law, is guilty and liable to punishment according to the part which he takes in the perpetration of the offence. It consists of three principal parts—the commencement (or caption), statement, and conclusion. The caption is no part of an indictment; it is merely the style of the Court where it is preferred, which is prefixed by way of preamble when the record is made up, or when it is returned to a *certiorari*. The statement must be certain as to the party indicted, and as to the person against whom the offence was committed, and also as to time and place, facts, circumstances, and intent. It must be positive, and neither double nor repugnant. There is, in general, no time limited for preferring an indictment, but by several statutes certain limitations for certain offences are fixed. If an indictment be defective it will be quashed.—2 *Hawk.* c. xxv., s. 4; *Arch. Crim. Plead.*

An indictment for perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, and any indecent assault, cannot be presented unless either: (1) the prosecutor has been bound by recognisance to prosecute; or (2) the accused has been committed to, or detained in custody, or has been bound by recognisance to appear to answer; or (3) the consent of a judge of the Supreme Court, or of the Attorney-General or Solicitor-General, has been obtained. See 22 & 23 Vict. c. 17, commonly called the 'Vexatious Indictments Act.'

Indictment, in the Scotch law, is the form of process by which a criminal is brought to trial at the instance of the Lord Advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the form of criminal letters.

Indictment de felonia est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Anglia

non est interregnum. Jenk. Cent. 205.—(Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.)

Indictor, he who indicts another for an offence.

Indirect Evidence, proof of collateral circumstances from which a fact in controversy, not directly attested by witnesses or documents, may be inferred. It is also called circumstantial and presumptive evidence. See *Taylor* or *Best on Evidence.*

Indistanter, forthwith; without delay.

In disjunctivis sufficit alteram partem esse veram. Wing. 13.—(In things disjunctive it suffices should either part be true.)

Indivisum, that which is held in common without partition.

Indorsee, the person to whom a bill of exchange, promissory note, bill of lading, etc., is assigned by indorsement, giving him a right to sue thereon.

Indorsement [fr. *in,* Lat., upon, and *dorsum,* a back], anything written or printed upon the back of a deed or writing. The requisites of a valid indorsement of a bill of exchange, promissory note, or cheque, are laid down by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 32, the principal requisites being that the indorsement must be written on the bill itself (except in the case of an 'allonge' or 'copy' in a country where 'copies' are recognized) and signed by the indorser, his simple signature, without additional words, being sufficient; that it be an indorsement of the entire bill; and that where there are two or more indorsements, each is deemed to have been made in the order in which it appears on the bill, cheque, or note, until the contrary is proved.

Indorsement of Address. By R. S. C. 1883, Ord. IV., it is provided that the solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the Royal Courts of Justice, another proper place, to be called his *address for service,* which shall not be more than three miles from the Royal Courts, where writs, notices, etc., may be left for him; and that if he be agent of another solicitor, he shall add the name or firm and place of business of the principal solicitor. See SUMMONS.

Indorsement of Claim. By R. S. C. 1883, Ord. II., r. 1, every writ of summons in the High Court must be indorsed with a statement of the nature of the claim made, or of the relief or remedy required. And by Ord. III. it is further provided that the indorsement of claim shall be made on every writ of summons before it is issued (r. 1). See further LEAVE TO DEFEND.

Indorser, he who indorses, i.e., being the payee or holder, writes his name on the back of a bill of exchange, etc.

Indowment. See ENDOWMENT.

In dubio hæc legis constructio quam verba ostendunt. Jur. Civ.—(In a doubtful point the construction which the words point out is the construction of the law.)

Inducement, an allegation of a motive; an incitement to a thing; the introductory part of a pleading.

Induciæ legales, the days between the citation of a defendant and the day of appearance.

Induciare, to prorogue, postpone, respite.

Induction [fr. *inductio,* Lat., a leading into], the giving a parson possession of his church.

A clerk is not complete incumbent until induction, which is performed by a mandate from the bishop to the archdeacon, or if the church be exempt from archidiaconal jurisdiction, to the chancellor or commissary, or if it be a peculiar, to the dean or judge, who usually issues a precept to another clergyman to perform it for him.

The person who inducts takes the hand of the clerk, and lays it on the ring, key, or latch of the church-door, or wall of the church, or delivers a clod, turf, or twig of the glebe, and gives corporal possession of the church, saying:—

'By virtue of this mandate I induct you into the real, actual, and corporal possession or the church of [Stow], with all rights, profits, and appurtenances thereto belonging.'

The inductor then opens the doors, puts the clerk into the church, and tolls the bell to make his induction known. After which he indorses a certificate of the induction on the mandate.

Induction is the investiture of the temporal part of the benefice or the corporal seisin, as institution is of the spiritual. A clerk thus presented is in full possession of the temporalities, and is *persona impersonata* or parson imparsonee.

The oaths and subscriptions taken before induction were altered by the 28 & 29 Vict. c. 122, and now the incumbent on induction must declare—

That he assents to the Thirty-nine Articles and the Book of Common Prayer, and of the ordering of bishops, priests, and deacons, and believes the doctrine of the Established Church to be agreeable to the Word of God: and that he will use the form prescribed in the Book

of Common Prayer, and none other save as prescribed by lawful authority; and

That he has in no way made a contract, simoniacal to his knowledge, for the living, and will not perform any promise of that kind, made by others;

And he must take the oath of allegiance to the Queen. See 28 & 29 Vict. c. 122, and 31 & 32 Vict. c. 72.

Indulto, a dispensation granted by the pope to do or obtain something contrary to the Common Law.

Indument, endowment.

Industrial Schools. Schools (established by voluntary contribution) in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught. They are regulated by the Industrial Schools Act, 1866, 29 & 30 Vict. c. 118, as amended by 35 & 36 Vict. c. 21, which provides for their being inspected and 'certified.' If certified, children under fourteen found begging, etc., may be sent to them by order of two justices or a magistrate, for such period as they think proper, not exceeding the age of sixteen. School Boards may contribute to the expenses of such schools by s. 27 of the Education Act, 1870. A child may be apprenticed, or allowed to emigrate, before his period of detention has expired, under the Reformatory and Industrial Schools Act, 1891, 54 & 55 Vict. c. 23.

Industrial Exhibitions Act (28 & 29 Vict. c. 3), for the protection of inventions and designs exhibited at industrial exhibitions.

Industrial and Provident Societies. The statutes regulating these societies, 25 & 26 Vict. c. 87; 30 & 31 Vict. c. 117; and 34 & 35 Vict. c. 80, are consolidated by the Industrial and Provident Societies Act, 1876, 39 & 40 Vict. c. 45, which by s. 6 provides for the registration of societies 'for carrying on any labour, trade, or handicraft, including the buying or selling of land, of which no member shall claim an interest in the funds exceeding 200*l*.' By registration certain privileges defined by s. 11 are acquired. The most important of these are: limited liability of members, exemption from income tax, membership of minors, and binding authority of rules. By 43 Vict. c. 8 the exemption from income tax is repealed in case the society sells to non-members. Compare the article FRIENDLY SOCIETIES.

Industriam, per, a qualified property in animals *feræ naturæ* may be acquired *per industriam*, i.e., by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power that they cannot escape and use their natural liberty.—2 *Steph. Com.*

In eo, quod plus sit semper inest et minus. D. 50, 17, 110.—(The greater always includes the less.)

In esse (*actually existing*), distinguished from *in posse*, which means, that which is not, but may be. A child before birth is *in posse*; after birth, *in esse*.

Inesse potest donationi, modus, conditio, sive causa; ut, *modus est*; si, *conditio*; quia, *causa*. Dyer, 138.—(In a gift there may be a manner, condition, or cause; *ut*, introduces a manner; *si*, condition; *quia*, a cause.)

Inewardus, a guard, a watchman.—*Domesday.*

In extenso, from beginning to end, leaving out nothing.

In extremis, at the last gasp.

Infaciendo (*in doing or in feasance*).

In facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit. Co. Litt. 78.—(In an action which addresses itself to good and bad, the law looks more to the good than to the bad.)

Infalistatus, a capital punishment inflicted on the sands or sea-shore.—*Sed. qu.* See *Ralph de Hengham, Summa Parva*, cap. 3, and *Selden's* notes thereon.

Infamy, public disgrace; total loss of character. This does not now incapacitate from giving evidence.—7 & 8 *Vict.* c. 85, s. 1.

Infangenthef, a privilege of lords of certain manors to judge any thief taken within their fee.—*Anc. Inst. Eng.*

Infant [fr. *infans*. Lat., one who cannot speak], a person under twenty-one years of age, whose acts are in many cases either void or voidable. See AGE.

At *Common Law*, the contracts of infants are divided into three classes: 1st. Those which are absolutely void; such as are positively injurious to the interests of the infant, and can only operate to his prejudice; as a surety-bond, or a release to his guardian.

2nd. Those which are only voidable: such as are beneficial to him, which he may affirm or avoid when he comes of age; as a conveyance of lands, a promissory note, an account stated.

3rd. Those which are binding *ab initio* and need no ratification: such as contracts for the public service, articles of apprenticeship, executed contracts of marriage, representative acts as executor or trustee, contracts for necessaries.—*Story on Contracts*, 21.

By 'The Infants Relief Act, 1874' (37 & 38 Vict. c. 62), it is enacted that 'all contracts whether by specialty or by simple contract henceforth entered into by infants for the repayment of money lent, or to be lent, or for goods supplied, or to be supplied (other than contracts for necessaries), and all accounts stated with infants shall be absolutely

void; provided always that this enactment shall not invalidate any contract into which an infant may by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by law are voidable.' Section 2 provides that 'no action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.'

An infant is liable for torts committed by him unless the tort has arisen out of a contract. As to the criminal liability of infants, see AGE, *ante*.

The general superintendence and protective jurisdiction of the Court of Chancery over the persons and property of infants, is a delegation of the rights and duties of the Crown—the universal guardian of infants—and is retained for the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

By the Judicature Act, 1873, s. 25 (10), it is provided that in questions relating to the custody and education of infants, the rules of equity shall prevail.

See further GUARDIAN and CHILDREN, and consult *Eversley on the Domestic Relations; Simpson on Infancy*; and *Chitty's Statutes*, vol. iii., tit. '*Infants*.'

Infants Marriage Act, 18 & 19 Vict. c. 43. By virtue of this Act every infant (if a male of twenty, or if a female of seventeen years, s. 4), upon or in contemplation of marriage, may, with the sanction of the Chancery Division of the High Court, make a valid settlement or contract for a settlement of property.

Infant Life Protection Act, 1872, 35 & 36 Vict. c. 38. By this Act provision is made for regulating the receiving of infants for hire for the purpose of nursing or maintenance.

Infanticide, the killing of a child immediately after it is born. The felonious destruction of the fœtus in utero is more properly called fœticide, or criminal abortion.

In every case in which an infant is found dead, and its death becomes the subject of judicial investigation, the great questions which present themselves for inquiry are:—

(1) What is the age of the child?
(2) Was the child born alive?
(3) If born alive, how long had it lived?
(4) If born alive, by what means did it die?

If it be proved that its death was owing to violence, it is then to be ascertained who the murderer of it is. If suspicion fall upon the mother, it is to be determined—

(1) Whether she has been delivered of a child? and,

(2) Whether the signs of a delivery correspond as to time, etc., with the appearances developed in the child?

There are two ways in which a child may be born alive. (1) The cord may be pulsate, showing that it is alive, yet it may not respire. (2) It may be born and respire.

When a child is born alive, but has not yet respired, its condition is like that of the fœtus in utero. It lives merely because the fœtal circulation is still going on. In this case none of the organs undergo any change. The case of a child who is born alive and respires, is tested by respiration. The proofs of this test are deduced from the changes which take place in the system as soon as respiration commences.

See this subject fully discussed in *Taylor's Med. Jur.* c. xxxviii. *et seq.*; and *Guy's Foren. Med.* 118 *et seq.*

In favorabilibus, magis attenditur quod prodest quam quod nocet. Bacon.—(In things favoured, what does good is more regarded than what does harm.)

In favorem libertatis, vel vitæ [Lat.] (*in favour of liberty or life*).

Infectious diseases. It is an indictable offence to expose in a public frequented highway a person suffering from an infectious disorder.—*R.* v. *Vantandillo*, 4 *M. & S.* 73. The Public Health Act, 1875 (38 & 39 Vict. c. 55) contains various provisions (see ss. 120—139) calculated to prevent the spread of dangerous infectious diseases; and the Infectious Diseases Notification Act, 1889, 52 & 53 Vict. c. 72, enjoins the notification of certain specific diseases therein named, being, amongst others, small-pox, cholera, diphtheria, and certain fevers, by the medical attendant of the patient or the head of his family, to the local authority of the district; while the Infectious Diseases Prevention Act, 1890, 53 & 54 Vict. c. 34, which is concerned with the same diseases, authorises the inspection of dairies, the disinfection of bedding, etc. Both these latter are 'adoptive' Acts (see that title) only, except in the metropolis, where they are now superseded by the Public Health (London) Act, 1891, which has re-enacted them with formal modifications.

Infeoffment, the act or instrument of feoffment, or investiture, synonymous with *sasine*, the instrument of possession.—*Scotch Term.*

Inferior courts. They are the court-baron, the hundred-court, the borough civil court, the County Court, the Mayor's Court, London,

and also all courts of a special jurisdiction; but the County Courts are by far the most important of them. They are all controllable by writ of prohibition if they exceed their jurisdiction. See further 'The Borough and Local Courts of Record Act, 1872' (35 & 36 Vict. c. 86); and as to the jurisdiction of such courts, and the rules of procedure in force therein, see also the Judicature Act, 1873, ss. 88—90, and COUNTY COURTS.

The Inferior Courts Judgments Extension Act, 1882, 45 & 46 Vict. c. 21, following the procedure of the Judgments Extension Act, 1868, which applies to superior Courts only, renders, to a certain extent, judgment obtained in Inferior Courts in England, Scotland and Ireland respectively, effectual in any other part of the United Kingdom; but the working of the Act is very much cramped by the provision of s. 10, that the act is not to apply against any person domiciled in the three countries, respectively, unless the whole cause of action arose, and the summons was personally served upon the defendant within the district of the inferior court in which the action is brought.

Infeudation, the placing in possession of a freehold estate; also the granting of tithes to mere laymen.

In fictione juris semper æquitas existit. 11 Co. 51.—(In the fiction of law there is always equity.) See *Broom's Max.*

Infidel, one who does not accept the Christian religion.

In fieri [Lat.] (*in course of accomplishment*).

Infiht or **Insocna**, violence committed on a person by one inhabiting the same dwelling.

Infinitum in jure reprobatur. 9 Co. 45.—(Infinity is reprehensible in law.)

In formâ pauperis (*in the character of a pauper*). Every poor person, having cause of action, was entitled by 11 Hen. VII. c. 12 (see this Act and the cases thereon, *Chitty's Statutes*, vol. iv., tit. '*Paupers Suing*'), which is in affirmance of the Common Law, to have writs according to the nature of the case, without paying the fees thereon, and the judges might assign him counsel and solicitor, who acted gratis. This discretionary indulgence was confined to plaintiffs at Common Law, but was extended by Courts of Equity to defendants.

The statute 11 Hen. VII. c. 12 is repealed by the Statute Law Revision and Civil Procedure Act, 1883, but its provisions and those of the Chancery Orders and Common Law Rules (which gave effect to it in somewhat different terms), are thrown into one code by S. C. 1883, Ord. XVI., rr. 22—31, by which a person may be admitted to sue or defend as a pauper on proof that he is not worth 25*l.*, his clothes and the subject matter of the cause excepted, but he must first lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding, and the case and opinion, with an affidavit by the party or his solicitor of the truth of the facts in the case, must be produced to the Court. When admitted to sue or defend as a pauper, the Court may assign him, if necessary, a counsel, or solicitor, or both, who may not refuse without good reason, and are bound to act gratis.

Informal, deficient in legal form.

Informality, want of legal form.

Information, an accusation, or complaint; also, communicated knowledge.

Information in *Chancery*. Where a suit was instituted on behalf of the Crown or Government, or of those of whom it has the custody by virtue of its prerogative (such as idiots and lunatics), or whose rights are under its particular protection (such as the objects of a public charity), the matter of complaint was offered to the Court by way of information by the Attorney or Solicitor-General, and not by way of petition. When a suit immediately concerned the Crown or Government alone, the proceeding was purely by way of information, but where it did not do so immediately, a relator was appointed who was answerable for costs, etc.; and if he were interested in the matter in connection with the Crown or Government, the proceeding was then by information and bill. Informations differed from bills in little more than name and form; and the same rules were substantially applicable to each.—*Story's Eq. Plead.* 5; 1 *Dan. Ch. Pr.*, 4th ed., 2, 8, 288. The procedure is now by ordinary action in the High Court. (See R. S. C. 1883, Ord. I., r. 1.)

A *Crown* information (which was filed in the Court of Exchequer while that Court existed) is a suit for recovering money or other chattels, or for obtaining satisfaction, in damages, for any personal wrong committed in the lands or other possessions of the Crown. It is instituted to redress *private* wrongs, while criminal informations are resorted to to punish *public* wrongs, or heinous misdemeanours. See EX OFFICIO INFORMATIONS; and 28 & 29 Vict. c. 104. The most usual Exchequer informations are in cases of *intrusion*, for trespasses on Crown lands; *debt*, for Crown moneys due upon breaches of penal statutes; and, *in rem*, when any goods are supposed to become the property of the Crown, no one claiming them as treasure-trove, wrecks, waifs, and estrays. This information would seem to be retained, as it is not a proceeding for which

an action is substituted by R. S. C. 1883, Ord. I., r. 1. See also Ibid., r. 3.

Informations before a *justice of the peace* against a person alleged to have committed an offence punishable on summary conviction, must be laid within six months, and need not be in writing or on oath unless some Act of Parliament [i.e., the Act under which the particular offence is punishable] otherwise require, and must be for one offence only, and not for two or more offences. —*Summary Jurisdiction Act*, 1848, 11 & 12 *Vict.* c. 43, ss. 1, 10, 11.

As to criminal informations, see that title. And see also QUO WARRANTO.

Informatus non sum (*I am not informed*, or, *I have no instructions*).

Informer, a person who prosecutes those who break any law or penal statute; also an approver. See QUI TAM, APPROVER.

Infortunium, *homicide per*, where a man doing a lawful act, without intention of hurt, unfortunately kills another. See HOMICIDE.

Infra, this word occurring by itself in a book refers the reader to a subsequent part of the book, like *post*.

Infra annum luctûs (*within the year of mourning*). The phrase is used in reference to the marriage of a widow within a year after her husband's death, which was prohibited by the Civil Law. See 1 *Bl. Com.* 456, citing Cod. 5, 9, 2.

Infringement [fr. *infringo*, Lat., to break], breach or violation, applied to the breach of a law or violation of a right, as of copyright or patent right.

Infugare, to put to flight.—*Leg. Canuti*, c. 32.

Infula, a coif, or a cassock.—*Jacob.*

Inge, meadow, or pasture.—*Jacob.*

Ingenuitas, liberty given to a servant by manumission.—*Leg. H.* 1, c. 89.

Ingenuitas regni, the commonalty of the kingdom.—*Cowel.*

In gremio legis [Lat.] (*in the bosom or protection of the law*).

Ingress, Egress, and **Regress**, free entry into, going forth of, and returning from a place.

Ingressu, an abolished writ of entry. It was also called *præcipe quod reddat.*—*Cowel.*

Ingressus, the relief which an heir at full age paid to the head lord for entering upon the fee, etc.—*Blount.*

In gross. See GROSS.

Ingrossator magni rotuli, clerk of the pipe; a former Exchequer officer.

Ingrossing, writing the fair copy of a deed or instrument for the formal execution of it by the parties thereto. See ENGROSSING.

Inhabitant, a dweller or householder in any place.

In hæc verba, in these very words.

Inheritance, a perpetual or continuing right to an estate, invested in a person and his heirs.

The 'canons of inheritance' are the rules directing the descent of real property throughout the lineal and collateral consanguinity of the owner dying intestate, who is technically called the purchaser. The 3 & 4 Wm. IV. c. 106 materially altered the old canons of real property descent, but because the Act does not extend to any descent which took place on the death of any persons who died before the 1st January, 1834, it is deemed expedient to give both old and new:—

The old canons, which obtain in cases of ancestors dying *before* 1st January, 1834, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died actually seised, *in infinitum*, but shall never lineally ascend.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

(4) That the lineal descendants *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last seised, the inheritance shall descend to his collateral relations being of the blood of the first purchaser, subject to the three preceding rules.

(6) That the collateral heir of the person last seised must be his next collateral kinsman of the whole blood.

(7) That in collateral inheritances the male stocks shall be preferred to the female (that is, kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the females, however near), unless where the lands have in fact descended from a female.

The canons according to the new law grafted upon the old, are the following:—

(1) That inheritances shall, in the first place, lineally descend to the issue of the last purchaser *in infinitum*; by 'purchaser' being meant the person who last acquired the land, otherwise than by descent.

(2) That the male issue shall be admitted before the female.

(3) That where two or more of the male

issue are in equal degree of consanguinity to the purchaser, the eldest only shall inherit, but the females all together.

(4) That all the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants or issue of the purchaser, the inheritance shall descend to his nearest lineal ancestor.

(6) That the father and all the male paternal ancestors of the purchaser, and their descendants, shall be admitted before any of the female paternal ancestors, or their heirs; all the female paternal ancestors and their heirs before the mother, or any of the maternal ancestors, or her or their descendants; and the mother and all the male maternal ancestors, and her and their descendants, before any of the female maternal ancestors, or their heirs.

(7) That a kinsman of the half blood shall be capable of being heir; and that such kinsman shall inherit next after a kinsman in the same degree of the whole blood, and after the issue of such kinsman, when the common ancestor is a male, and next after the common ancestor when such ancestor is a female.

(8) That in the admission of female paternal ancestors, the mother of the more remote male paternal ancestor and her heirs shall be preferred to the mother of a less remote male paternal ancestor and her heirs; and in the admission of female maternal ancestors, the mother of the more remote male maternal ancestor and her heirs shall be preferred to the mother of a less remote male maternal ancestor and her heirs.—*Williams' Real Property.*

(9) Where there shall be a total failure of heirs of the purchaser, or where any lands shall be descendible, as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then, and in every such case, the land shall descend, and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof. See 22 & 23 Vict. c. 35, s. 19. This enactment is to be read as a part of 3 & 4 Wm. IV. c. 106, s. 20.

Inhibition. An ancient synonym for PROHIBITION, which see.

In the ecclesiastical law, the command of a bishop or ecclesiastical judge that a clergyman shall cease from taking any duty. See, e.g., Sequestration Act, 1871, s. 5; *Dale's case*, 6 *Q. B. D.* 376.

In the Scotch law: (1) A writ whereby the debtor or party inhibited is prohibited from contracting any debt which may become a burden on his heritable property. See 31 & 32 Vict. c. 156, and sched. Q. Q. (2) A writ prohibiting and discharging all persons from giving credit to a man's wife.—*Bell's Law Dictionary.*

In his quæ de jure communi omnibus concedunturr, consuetudo alicujus patriæ vel loci non est alleganda. 11 Co. 85.—(In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.)

Inhoc, or **Inhoke** [fr. *in*, within, and *hoks*, a corner], corner or part of a common field ploughed up and sowed with oats, etc., and sometimes fenced in when the rest of the field lies fallow.—*Kenn. Glos.*

In invidiam, to excite a prejudice.

Iniquum est aliquem rei suæ esse judicem. In propriâ causâ nemo judex sit. 12 Co. 13. —(It is unjust for any one to be judge in his own case. No one should be a judge in his own cause.) See *Dimes* v. *G. J. C. Co.*, 3 *H. L. C.* 759.

Initialia testimonii. In former times, before examining a witness in chief in Scotland, he was first examined as to his disposition towards the parties, whether he bore ill-will to either of them, or had been prompted what to say, or had received any bribe. It is somewhat similar to our *voir dire*, which see.

Initials, the first letters of names. By 3 & 4 Wm. IV. c. 42, s. 12, in all actions upon bills of exchange, promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, shall be sufficient to designate such persons by the same initial letter or letters, instead of stating them in full.

Initiate, *tenant by courtesy*, the husband is so called when a child is born—capable of inheriting the land subject to his courtesy.

In invitum [Lat.], against an unwilling party.

In judicio non creditur nisi juratis. Cro. Car. 54.—(In a trial, credence is given only to those who are sworn.)

Injunction. This is the discretionary process of preventive and remedial justice, whereby a person is required to refrain from doing a specified meditated wrong, not amounting to a crime. It is either (1) *interlocutory*, i.e., *provisional* or *temporary*, until the coming in of the defendant's answer, or until the hearing of the cause; or (2) *perpetual*, i.e., forming part of a decree made at a hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained

from the commission of an act contrary to equity and good conscience. See, for more detailed information, *Kerr on Injunctions; Joyce on Injunctions.*

Prior to the Judicature Act injunctions were grantable by the Court of Chancery only (except to prevent the repetition of a breach of contract or injury under s. 79 of the C. L. P. Act, 1854, or the infringement of patents, for which purposes a Common Law Court might grant them), and injunctions, called 'common injunctions,' were frequently granted by that Court to stay a suitor from proceeding in a Court of Common Law to assert a right which it was contrary to equity that he should assert. Such an injunction might, upon a proper case being presented to the Court, be granted at any stage of the proceedings at law. Thus an injunction would be granted to stay trial; after verdict to stay judgment; or after judgment to stay execution.

By s. 24. subs. (5), of the Judicature Act, 1873, however, it is enacted that no proceeding in the High Court of Justice, or before the Court of Appeal, shall be restrained by injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if the Act had not passed, may be relied on by way of defence thereto, it being provided, however, that the Court may direct a 'stay of proceedings.'

Amongst public nuisances, restrainable either upon information or at suit of a private person immediately grieved by them, may be enumerated obstructions to highways and bridges, public rivers and harbours, and everything that renders the enjoyment of life and property hazardous and uncomfortable. In the case of a private nuisance, there must be such an injury as from its nature is not susceptible of being compensated by damages, or as from its continuance or permanent mischief must occasion a constantly recurring grievance which cannot be otherwise adequately prevented than by an injunction; as where the injury is irreparable, or where injury to health or trade, destruction of the means of subsistence, or permanent ruin to property may ensue, e.g., from the obstruction of ancient lights of a dwelling-house, blocking up of water-courses, diversion of streams from mills, the back flowage on mills, pulling down of the banks of rivers and exposing adjacent lands to inundation, or neighbouring mills to destruction, etc.

The piracy of a copyright, or the invasion of a patent can be restrained, and the Court will direct an account of the books printed, and the profits made by the infringer.

A special injunction may be obtained to restrain the following acts:—The publication of letters, for the writer of a letter has a joint property in it with the person to whom it is addressed, the receiver having only a special property in it; the publication of a libel; the improper use by one man of the trade-marks or name of another person; the disclosure of secrets acquired in the course of a confidential employment; the alienation of property; the negotiation of bills of exchange and promissory notes obtained by fraud or collusion; the unjust transfer of stock; the receipt of dividends; the sale of specific chattels; the vexatious alienation of real property *pendente lite*; the sale of trust property; the improper presentation to a benefice; the appointing of a minister to a dissenting chapel; the endorsement of a registry or the sailing of a ship; the breach of covenants.

The 21 & 22 Vict. c. 27 empowered the Court of Chancery to award damages to an injured party, even in addition to or in substitution for an injunction.

By the Judicature Act, 1873, s. 25, subs. 8, it is provided that an injunction may be granted by an interlocutory Order of the Court 'in all cases in which it shall appear to the Court to be just or convenient that such Order should be made.'

In jure, non remota causa sed proxima spectatur. Bacon Max., reg. 1.—(In law, the proximate, and not the remote cause, is regarded.)

Injuria. Injury; a wrongful act done. See DAMNUM ABSQUE INJURIÂ.

Injuria illata judici, seu locum tenenti regis videtur ipsi regi illata maximè si fiat in exercentem officium. 3 Inst. 1.—(An injury offered to a judge or person representing the king is considered as offered to the king himself, especially if it be done in the exercise of his office.)

Injuria non excusat injuriam.—(One wrong does not justify another.) See 6 *E. & B.* 47.

Injuria non præsumitur. Co. Litt. 232 *b.* —(Injury is not presumed.)

Injury, any wrong or damage done to another, either in his person, rights, reputation, or property.

Inlagare, to admit or restore to the benefit of the law; to in-law, or render law-worthy. —*Cowel.*

Inlagary, or **Inlagation,** a restitution of an outlaw to the protection and benefit of the law.—*Cowel; Bract.* l. 3, tr. 2, c. 14.

Inlagh, a person within the law's protection, contrary to *utlagh*, an outlaw.—*Cowel.*

Inland, demesne land; that which was let to tenants being denominated *outland* (*utland*).—*Domesday.*

Inland Bill of Exchange, 'a bill which on the face of it purports to be (*a*) both drawn and payable within the British Islands; or (*b*) drawn within the British Islands upon some person resident therein.'—*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 4. Any other bill is a foreign bill, but unless the contrary appear on the face of the bill the holder may treat it as an inland bill.—(*Ib.*)

Inland Revenue. That portion (by far the largest) of the public revenue which is derived from the taxation of home commodities and duties on property and income, houses, stamps, probates, legacies, etc., as distinguished from the portion derived by customs duties (see CUSTOMS) from imported commodities, such as foreign wine and spirits, tea, etc. It is supervised by the Inland Revenue Commissioners, and a large number of enactments relating to its regulation are contained in the consolidating Inland Revenue Regulation Act, 1890, 53 & 54 Vict. c. 21. By s. 39 of that Act 'inland revenue' means 'the revenue of the United Kingdom collected or imposed as stamp duties, taxes, and duties of excise' (see that title), 'and placed under the care and management of the Inland Revenue Commissioners.'

A 'Customs and Inland Revenue Act' is passed annually, for the purpose of imposing the taxes proposed in the Annual Budget of the Chancellor of the Exchequer, and sanctioned by vote of the House of Commons.

Inland Trade, trade wholly carried on at home, as distinguished from Commerce, which see.

Inlantal, Inlantale, demesne or inland, opposed to *delantal*, or land tenanted.—*Cowel.*

Inleased, insnared.—*Co. Inst.* 247.

Inlegiare, to admit a person to the protection of the law, after undergoing a legal punishment for a delinquency.

In limine, *at the outset*, preliminary.

In loco parentis (*in the place of a parent*).

In majore summâ continetur minor. 5 Co. 115.—(In the greater sum of money is contained the less.)

In malam partem, in a bad sense, so as to wear an evil appearance.

In maleficiis voluntas spectatur non exitus. D. 48, 8, 14.—(In evil deeds regard must be had to the intention and not to the result.)

In maximâ potentiâ minima licentia. Hob. 159.—(In the greatest power there is the smallest license.)

In medias res, into the heart of the subject, without preface or introduction.

Innamium, a pledge.

Inner House, the name given to the chambers in which the First and Second Divisions of the Court of Session in Scotland hold their sittings. See OUTER HOUSE.

Innings, lands recovered from the sea; when rendered profitable they are termed *gainage* lands.—*Cowel.*

Innkeepers, proprietors of common inns for the accommodation of travellers in general.

All persons are deemed innkeepers who keep houses where a traveller is furnished, for profit, with everything which he has occasion for whilst on his way. They are bound to take in all travellers and wayfaring persons, and to entertain them, if they can accommodate them, at a reasonable charge, provided they behave themselves properly, etc.; and they have a lien upon the goods of their guests for board and lodging, etc.; but may not detain their persons or seize their clothing in actual wear. By the Common Law innkeepers are bound to take not merely ordinary care but uncommon care of the goods, money, and baggage of their guests; and they are responsible for the acts of their servants and domestics, as well as for the acts of other guests. (*Calye's case*, 8 *Rep.* 32, and 1 *Smith L. C.*) But the liability of innkeepers at the Common Law having been found to press hardly upon them, the Innkeepers Act, 1863, 26 & 27 Vict. c. 41 (as to which see *Spice* v. *Bacon*, 2 *Q. B. D.* 463), provided that no innkeeper should be liable to make good to any guest any loss or injury to goods or property brought to his inn, not being a horse or other live animal, or any carriage, to a greater amount than the sum of 30*l.*, except—

1. Where such goods have been stolen, lost, or injured through the default or neglect of the innkeeper or his servants.

2. Where such goods have been deposited for safe custody with the innkeeper.

And it has been further provided by the Innkeepers Act, 1878, 41 Vict. c. 38, that in addition to his right of lien, the innkeeper may, after six weeks, sell by public auction all goods (advertised at least one month beforehand), horses, etc., left with him by a person leaving the inn in his debt.

Innocent conveyances, a covenant to stand seised; a bargain and sale; and release; so called because, since they convey the actual possession by construction of law only, they do not confer a larger estate in property than the person conveying possesses, and therefore, if a greater interest be conveyed by these deeds than a person has, they are only void, *pro tanto*, for the excess. But a feoffment was a *tortious* conveyance, and therefore, under such circumstances, would have been void altogether, and produced a forfeiture. But by the 4th section of the 8 & 9 Vict. c. 106, a feoffment made after October 1,

1845, shall not have any tortious operation. It is, therefore, an innocent conveyance. See *Phillips* v. *Phillips*, 8 *Jurist.* (*N. S.*), 145.

Innominate contracts, those which had no particular names, as permutation and transaction.—*Civ. Law.*

Innonia, an inclosure.—*Spelm.*

In notis, in the notes.

Innotescimus [fr. *innotesco*, Lat., to make known], a kind of letters patent.—*Jacob.*

Innovation, an exchange of one obligation for another, so as to make the second come in place of the first.

In novo casu, novum remedium apponendum est. 2 Inst. 3.—(A new remedy is to be applied to a new case.)

Innoxiare, to purge one of a fault and make him innocent.—*Leg. Ethelred.* c. 10.

Inns of Chancery, so called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the Court of Chancery. There were nine of them, Clement's, Clifford's, and Lyon's Inn, Furnival's, Thavies', and Symond's Inn, New Inn, and Barnard's and Staples' Inn. These were formerly preparatory colleges for students, and many entered them before they were admitted into the Inns of Court. See 3 *Rep. Pref.* 18; *Report of Royal Commission*, 1855; *R.* v. *Barnard's Inn*, 6 *Ad. & Ell.* 17.

Inns of Court. There are four of them, exercising the right of admitting persons to practise at the bar—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn.—2 *Reeves*, 360; 3 *Rep. Pref.* 18. No means of obtaining that rank exists but that of becoming enrolled as a student in one or other of these Inns, and afterwards applying to its benchers for a call to the bar.

The Inns of Court from time to time agree on certain 'Consolidated Regulations,' as to the admission of students, the calling of students to the bar, etc. The last Regulations issued were agreed to in May 1891, differing from those which preceded them in the substitution of Readers and Assistant Readers for Professors, and in the endeavour to establish a closer relationship between this new teaching staff and the Students than that which had existed between the Professors and the Students.

These important Regulations of 1891 now follow in their entirety:—

Admission of Students.

1. Every person, not otherwise disqualified, who shall have passed a Public Examination at any University within the British dominions, or for a Commission in the Army or Navy, or for the Indian Civil Service, or for the Consular Service, or for Cadetships in the three Eastern Colonies of Ceylon, Hong Kong, and the Straits Settlements, shall be entitled to be admitted as a Student, without passing a preliminary Examination, but subject to Rule 7.

2. Every other person, except such as come under Rule 15, applying to be admitted as a Student, shall, before such admission, have satisfactorily passed an Examination in the following subjects, viz.:—

(*a*) The English Language,
(*b*) The Latin Language, and
(*c*) English History.

Provided that the Board of Examiners mentioned in Rule 3 shall have power to report any special circumstances to the Masters of the Bench of the Inn of Court of which any person may desire to be admitted as a Student, and that the Masters of the Bench of such Inns shall have power, with or without such report, to relax or dispense with this regulation, in whole or in part, in any case in which they may think special circumstances so reported, or otherwise ascertained by the Bench, justify a departure from this regulation.

3. Such Examination shall be conducted by a joint Board, to be appointed by the four Inns of Court.

4. For constituting such Board, each of the four Inns of Court shall appoint four Examiners, and the Council of Legal Education shall have power to allot such remuneration as the Council shall think fit to such Examiners.

5. The Examiners shall attend according to a Rota to be fixed by themselves, and Two shall be a Quorum.

6. Meetings of the Examiners shall be held at least once in every week during each Term, as hereinafter defined, and once in the week next preceding each Term, and at such other times as shall be appointed in accordance with any order of the Board. Provided that no Examiner need attend unless two clear days' notice prior to the day appointed for his attendance shall have been given to the Secretary of the Board, by at least one Candidate, of an intention to present himself on that day for Examination.

7. No Attorney at Law, Solicitor, Writer to the Signet, or Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, or Agent in any Court original or appellate, Clerk to any Justice of the Peace, or person acting in any of these capacities, and no Clerk to any Barrister, Conveyancer, Pleader, Equity Draftsman,

Attorney, Solicitor, Writer to the Signet, or Writer of the Scotch Courts, Proctor, Notary Public, Parliamentary Agent, or Agent in any Court original or appellate, Clerk in Chancery, Clerk of the Peace, Clerk to any Justice of the Peace, or to any officer in any Court of Law or Equity, and no person acting in the capacity of any such Clerk, shall be admitted as a Student at any Inn of Court until such person shall have entirely and *bonâ fide* ceased to act or practise in any of the capacities above-named or described; and if on the Rolls of any Court, shall have taken his name off the Rolls thereof.

8. The following forms shall be adopted by each of the four Inns of Court on application for admission as Students:—

I, of
aged , the Son of
of , in the county of [add father's profession, if any, and the condition in life and occupation, if any, of the Applicant]
do hereby declare that I am desirous of being admitted a Student of the Honourable Society of
for the purpose of being called to the Bar, or of practising under the Bar, and that I will not, either directly or indirectly, apply for or take out any certificate to practise, directly or indirectly, as a Pleader, or Conveyancer, or Draftsman in Equity, without the special permission of the Masters of the Bench of the said Society.

And I do hereby further declare that I am not an Attorney at Law, Solicitor, a Writer to the Signet, a Writer of the Scotch Courts, a Proctor, a Notary Public, a Clerk in Chancery, a Parliamentary Agent, an Agent in any Court original or appellate, a Clerk to any Justice of the Peace, nor do I act, directly or indirectly, in any such capacity, or in the capacity of Clerk of or to any of the persons above described, or as Clerk of or to any Barrister, Conveyancer, Pleader, or Equity Draftsman, or of or to any officer in any court of Law or Equity.

Dated this day of
(Signature)

We, the undersigned, do hereby certify that we believe the above-named to be a gentleman of respectability, and a proper person to be admitted a Member of the said Society.

Barristers of
Approved
Treasurer, or, in his absence, by two Benchers.

9. Every person applying to be admitted as a Student shall pay the sum of One Guinea upon application for the Form of Admission; and the sums so paid shall form part of the common fund hereinafter mentioned.

Keeping Terms.

10. The word Terms in these Regulations, except where otherwise expressed, shall mean the Terms as fixed by the Inns of Court for the purpose of Calls to the Bar.

11. Students who shall at the same time be Members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Queen's University in Ireland, St. Andrew's, Aberdeen, Glasgow, Edinburgh, or the Victoria University, Manchester, shall be enabled to keep Terms by dining in the halls of their respective Inns of Court any three days in each Term.

12. Students who shall not at the same time be Members of any of the said Universities shall be enabled to keep Terms by dining in the halls of their respective Inns of Court any six days in each Term.

13. No day's attendance in Hall shall be available for the purpose of keeping Term, unless the Student attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said, unless the acting Treasurer on any day during dinner shall think fit to permit the Students to leave earlier.

14. A Student who, previously to his admission at an Inn of Court, was a Solicitor in practice for not less than five years (and, in accordance with Rule 7, has ceased to be a Solicitor before his admission as a Student), may be examined for Call to the Bar without keeping any Terms, and may be called to the Bar upon passing the public Examination required by these Rules, without keeping any Terms;

Provided that such Solicitor has given at least twelve months' notice in writing to each of the Four Inns of Court, and to the Incorporated Law Society, of his intention to seek Call to the Bar, and produces a Certificate signed by two Members of the Council of the Incorporated Law Society that he is a fit and proper person to be called to the Bar.

15. A Student coming under the last preceding Rule may be exempted by the Masters of the Bench of the Inn to which he seeks Admission from passing the Examination preliminary to Admission.

Calling to the Bar.

16. Every Student shall have attained the

age of Twenty-one years before being called to the Bar.

17. Every Student, except such as come under Rule 14, shall have kept Twelve Terms before being called to the Bar, unless any Term or Terms shall have been dispensed with under special circumstances by the Benchers of his Inn.

18. No Student shall be called to the Bar, unless such Student shall, to the satisfaction of the Council of Legal Education, have passed a Public Examination for the purpose of ascertaining his fitness to be called to the Bar, and have obtained from the Council a Certificate of having passed such Examination.

19. No Student shall be called to the Bar until his name and description shall have been screened in the Hall, Benchers' Room, and Treasurer's or Steward's Office, of the Inn of which he is a Student, fourteen days in Term before such call.

20. The name and description of every such Student shall be sent to the other Inns, and shall also be screened for the same space of time in their respective Halls, Benchers' Rooms, and Treasurers' or Stewards' Offices.

21. No Call to the Bar shall take place except during a Term; and such call shall be made on the same day by each of the Inns, namely, on the Sixteenth day of each Term, unless such day shall happen to be Saturday or Sunday, and in such case on the Monday after.

Certificates to practise under the Bar.

22. No Student shall be allowed to take out a Certificate to practise under the Bar without the special permission of the Masters of the Bench of the Inn of Court of which he is a Student, to be given by order of such Masters, and no such permission shall be granted to any Student unless he shall be qualified to be called to the Bar, and the regulations, as to screening names in the Halls, Benchers' Rooms, and Treasurers' or Stewards' Offices, applicable to Students desirous of being called to the Bar, shall be applicable to Students desirous of practising under the Bar. Such permission shall be granted for one year only from the date thereof, but may be renewed annually.

Council of Legal Education.

23. The Council of Legal Education shall consist of twenty Benchers, five to be nominated by each Inn of Court, of whom four shall be a quorum. The Members of the Council shall remain in office for two years, and each Inn shall have power to fill up any vacancy that may occur in the number of its nominees during that period. To this Council shall be entrusted the power and duty of superintending the Education and Examination of Students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted for those purposes, or in relation thereto, and such other matters as are herein in that behalf mentioned.

The Committee of Education or Board of Studies.

24. The Council shall appoint a Committee of the Members of the Council, or, if deemed expedient, a board of Studies, consisting of Members of the Council and of the Teaching Staff. The constitution of such Committee or Board, and the period for which its Members shall hold office, shall be from time to time determined by the Council.

25. The Committee or Board shall, subject to the control of the Council, superintend and direct the Education and Examination of Students, and all matters of detail in respect to such Education and Examination.

Lectures and Classes.

26. The Lectures and Classes shall be open to all members of the Inns of Court.

27. Students shall be provided with the means of Education in the general principles of Law, and in the Law as practically administered in this country, and for the purpose of such Education, Systematic Instruction shall be given in the following subjects:—

28. The subjects for instruction shall be—

1. Roman Law and Jurisprudence and International Law, Public and Private (Conflict of Laws).
2. Constitutional Law (English and Colonial) and Legal History.
3. English Law and Equity, viz:—
   - (*a*) Law of Persons including—
     - Marriage and Divorce.
     - Infancy.
     - Lunacy.
     - Corporations.
   - (*b*) Law of Real and Personal Property and Conveyancing, including—
     - Trusts; Mortgages.
     - Administration of Assets on Death; on Dissolution of Partnerships; on Winding-up of Companies, and in Bankruptcy.
     - Practical instruction in the preparation of Deeds, Wills, and Contracts.

(c) Law of Obligations.
- Contracts.
- Torts.
- Allied Subjects (implied or quasi contracts), estoppel, etc.
- Commercial Law, with especial reference to Mercantile Documents in daily use, which should be shown and explained.

(d) Civil Procedure, including evidence.

(e) Criminal Law and Procedure.

Staff of Teachers and Mode of Teaching.

29. There shall be a permanent staff of such a number of Readers, not more than eight, as the Council may think expedient; and such Readers shall give instruction both catechetically and by lectures, in such subjects as shall be directed by the Council.

30. In addition to the Readers there shall be a permanent staff of Assistant Readers for Elementary Classes, but the number of such Assistant Readers and Elementary Classes shall be left to the Council.

31. In addition to the staff of Readers and Assistant Readers the Council shall also have power to engage the services of Lecturers on particular subjects, whether enumerated above or not, as they may think fit.

32. Both Lectures and Classes shall be held throughout the entire year, except during the Legal Vacations, at such place or places as the Council may appoint, but so as not to unduly prefer one Inn to another.

Tenure of Offices.

33. Each Reader shall be appointed for three years, and shall be re-eligible, but he shall be removable during his term of office by the vote of not less than ten Members of the Council.

34. The period for which Assistant Readers shall be appointed, and the conditions of their tenure of office, shall be left to the discretion of the Council.

35. To secure systematic instruction, the Scheme of the Lectures to be given by each Reader and Assistant Reader shall be submitted to, and approved by, the Committee or Board of Studies, at such times and in such manner as the Committee or Board shall direct.

36. Students, in addition to availing themselves of the means of instruction provided by these Regulations, are recommended to attend in the Chambers of a Barrister or Pleader for the purpose of studying the practice of the Law; but such attendance shall not be compulsory.

Salaries and Payments.

37. A system of payment by capitation fees is recommended for adoption by the Council if practicable.

38. The sum of 500*l.* per annum, and such capitation fees as the Council may decide, shall be paid to each of the Readers.

39. The remuneration of the Assistant Readers, and Lecturers on particular subjects, shall be left to the discretion of the Council.

40. Each Student shall pay on admission a sum of Five Guineas, which shall entitle him to attend all the Lectures and Classes of all the Readers and Assistant Readers, so long as he shall be a Student. The Council shall have power to require payment of additional fees for attendance at the Lectures of Lecturers on particular subjects appointed under Regulation 31.

The Examinations for Call to the Bar.

41. There shall be four examinations for Calls to the Bar in each year—one before each Term, and in sufficient time to enable the requisite Certificates to be granted by the Council before the first day of each Term.

42. An Examination in Roman Law, and in such of the Heads of the English Law and Equity mentioned in Rule 28 (3) as the Council shall from time to time determine, shall be obligatory for Call to the Bar.

43. No Student, except such as come under Rule 14, shall be examined for Call to the Bar until he shall have kept nine Terms; but Students shall have the option of passing the Examination in Roman Law, required by Rule 42, at any time after having kept four Terms.

44. The Council may accept as an equivalent for the Examination in Roman Law—

i. A Degree granted by any University within the British Dominions, for which the qualifying Examination included Roman Law;

ii. A Certificate that any Student has passed any such Examination, though he may not have taken the Degree for which such Examination qualifies him; and

iii. The Testamur of the Public Examiners for the Degree of Civil Law at Oxford that the Student has passed the necessary Examination for the Degree of Bachelor of Civil Law;

Provided the Council is satisfied that the Student, before he obtained his Degree, or

obtained such Certificate or Testamur, passed a sufficient Examination in Roman Law.

45. There shall be a Board of three Examiners in each subject, viz., a Reader, with such Assistants selected by the Council, not being members of the Staff of Readers and Assistant Readers, as the Council may determine.

46. Examination for Call to the Bar shall be by written papers, and by such *vivâ voce* questions (if any) as the Examiners may think desirable.

47. Each Examiner shall be appointed for three years, subject to removal by the Council; but no Examiner, other than a Reader, shall be re-eligible until he has been at least one year out of office.

48. The Council shall have power to appoint such Assistant Examiners as may be necessary, who shall hold office during the pleasure of the Council.

49. The fee to be paid to each Examiner and Assistant Examiner shall be left to the discretion of the Council.

Honours and Studentships.

50. The Council shall grant Certificates of Honour to such persons as may be reported worthy of the same by the Examiners.

51. Two Studentships of One Hundred Guineas per annum each, tenable for three years, shall in each year be given to the Students who shall pass the best Examination, on the whole, in all the subjects mentioned in Regulation 28. But the Council shall not be obliged to recommend any Studentship to be awarded if the result of the Examination be such as, in their opinion, not to justify such recommendation. Where any Candidates appear to be equal or nearly equal in merit, the Council may, if they think fit, divide the Studentship between them equally or in such proportions as they consider just.

52. Only Members of an Inn not called to the Bar shall compete for a Studentship.

53. No person who has gained one Studentship shall hold another.

54. The expense of these Studentships shall be defrayed out of the Common Fund.

55. There shall be two Honour Examinations in each year, conducted by a Board of Examiners appointed by the Council, at each of which one Studentship and Certificates of Honour, and Pass Certificates, enabling the holders to be called to the Bar without further Examination, may be awarded.

56. At every Call to the Bar those Students who have obtained Studentships shall take rank in seniority over all other Students called on the same day, and those Students who have obtained Certificates of Honour shall take rank immediately after the holder of a Studentship called on the same day.

57. The Inn of Court to which the holder of any Studentship or of a Certificate of Honour belongs, may, if desired, dispense with any Terms not exceeding two that may remain to be kept by such Student previously to his being called to the Bar.

58. The Examiners shall submit their Examination Papers to the Committee or Board of Studies, for approval, at such time as the Committee or Board shall direct; and the number of marks to be attributed to each paper shall also be submitted to the Committee or Board for their approval.

59. Previous to each Examination the Committee or Board shall give such notice as they shall think fit of the Books and branches of subjects in which Students will be required to pass at such Examination, in order to be entitled to a Certificate.

60. One Examiner at least shall be present during the whole time of the Examination in writing.

61. The Board of Examiners shall, after each Examination, report the result thereof to the Committee or Board of Studies, who shall submit to the Council the names of those Students (if any) who are in their opinion entitled to receive Pass or Honour Certificates or to obtain Studentships.

62. All Students shall be bound by such variations as may from time to time be made in these Regulations.

Common Fund.

63. The four Inns of Court shall continue their annual contributions of Three Hundred and Sixty Pounds each towards constituting the Common Fund, to which shall be added the several fees for Forms of Admission and for attending Lectures; and also the several sums of Five Guineas for each Student, to be paid by the Inns of Court respectively, as additional contributions, pursuant to the Report of the Committee of the four Inns of Court, dated 6th December, 1871; and any further money which may, from time to time, be required to enable the Common Fund to meet the charges on it in any year, shall be contributed by the four Inns of Court at the end of such year, ratably and in proportion to the number of Students belonging to the four Inns respectively, who shall in that year have been called to the Bar, or have for the first time obtained permission to practise under the Bar.

In pursuance of these Regulations, the Council appointed, in November 1891, Six Readers at a salary of 500*l.* a year each, and

also Four Assistant Readers at a salary of 350*l.* a year each, viz. :—

On the terms that each Reader in English Law and Equity should deliver two Lectures a week—one to advanced and one to commencing students, and also hold an advanced class at least twice in each week; that each Assistant Reader in English Law and Equity should hold an Elementary Class three times a week; that the Reader in Roman Law, etc., should give two Lectures a week, viz.: one to advanced and one to commencing students, and hold two advanced classes in each week; that the Assistant Reader in Roman Law, etc., should hold at least three Elementary classes a week; and that the Reader in Constitutional Law and Legal History, and also the Reader in Procedure and Evidence, will have to give one Lecture and to hold three classes a week.

The Lectures and classes are to be for one hour each, and to be given and held in each week throughout the entire year, except during the legal vacations, and it is intended that every Student shall be definitively attached to some member of the Teaching Staff as a consulting tutor or adviser.

The Readers were appointed for three years, and are re-eligible, but they are also removable, if necessary, by the vote of not less than ten Members of the Council.

The Assistant Readers are appointed for one year, and are re-eligible, and similarly removable.

'The Council will expect that practical instruction be given in the preparation of Deeds, Wills, and Contracts, and that Mercantile documents in daily use be shown and explained.'

A Board of Studies will be appointed annually by the Council, consisting of eight Members of the Council and three of the Teaching Staff, and four Members of the Council will be a quorum. In order to secure systematic instruction, the scheme of the Lectures to be given by each Reader and Assistant Reader will have to be submitted to, and approved by the Board.

Each of the Inns is possessed of considerable property, consisting mostly of chambers, which are let, by preference, and almost exclusively, to members of the Inns. The property is managed by the Benchers of the Inn, who consist mostly of the Queen's Counsel, each of whom, on election by the existing Benchers, usually becomes a Bencher immediately on his appointment. A Report presented by a Royal Commission in 1855 contains much important information as to the property and accounts of the Inns and their management. From this report it appears that none of the Inns are corporate bodies; that the Commissioners conceived that as regards the Temples a direct trust arises by the acceptance of a grant from James I., but that there is no trace of either Gray's Inn or Lincoln's Inn being held on any trust; the Commissioners observing, however, that there was every disposition on the part of the Benchers to render the funds of the societies available for the purpose of education whether a trust exists or not. The income of the Inner Temple in 1854 was set down at 21,168*l.* 16*s.*; of the Middle Temple at 10,192*l.* 10*s.* 7½*d.*; of Lincoln's Inn at 18,242*l.* 12*s.* 3*d.*; and of Gray's Inn at 8,343*l.* 4*s.* 8*d.*; the 'necessary out-goings incidental to property of this peculiar character' being in the case of each Inn very large, and very great expenses being incurred for repairs and rebuilding. The Commissioners believed that considerable advantage might be made to accrue to the profession generally, and especially to the students, from their dining together not unfrequently in Hall.

Innuendo [fr. *innuo*, Lat., to nod], a word used in statements of claims, indictments, and other pleadings, to ascertain a person or thing which was named before, or to connect an expression with a certain person; as to say, he (*innuendo*, i.e., meaning the plaintiff) did so and so.—4 *Rep.* 17.

In odium spoliatoris omnia præsumuntur. 1 Vern. 19.—(All things are presumed against a despoiler.)

Inofficious testament, a will not in accordance with the testator's natural affection and moral duties.—*Williams on Executors.*

In omnibus pœnalibus judiciis et ætati et imprudentiæ succurritur. D. 50, 17, 108.—(In all penal sentences age and imprudence should be borne in mind.)

In omnibus quidem, maxime tamen in jure, æquitas spectanda sit. D. 50, 17, 90.—(In everything, but especially in law, equity is to be regarded.)

In omni re nascitur res quæ ipsam rem exterminat. 2 Inst. 15.—(In everything a thing is born which destroys that thing itself.)

Inops consilii (*wanting advice*).

Inordinatus, an intestate.

In pacato solo, in a country which is at peace.

In pari causâ possessor potior haberi debet. D. 50, 17, 128, s. 1.—(In an equal cause he who has the possession should be preferred.)

In pari delicto, potior est conditio possidentis.—(In equal fault, the condition of the possessor is the more favourable.) Where both parties are equally in the wrong, the defendant holds the stronger ground. The law will take notice

of an illegal transaction to defeat a suit, not to maintain one.

In pari materiâ, in an analogous case or position.

Inpeny, and **Outpeny**, customary payments on alienation of tenants, etc.—*Spelman.*

In person. A party, plaintiff or defendant, who sues out a writ or other process, or appears to conduct his case in court himself, instead of through solicitor or counsel, is said to act and appear in person. Any party, but one suing or defending *in formâ pauperis*, may do this; and of recent years the number of parties conducting their cases in person has very much increased.

In personam. All civil actions are either *in personam* or *in rem*; actions *in personam* are those which seek recovery of damages, etc. See IN REM.

In pleno lumine, in public; in common knowledge; in the light of day.

In pœnalibus causis benignius interpretandum est. D. 50, 17, 155, s. 1.—(In penal causes the interpretation ought to be the more favourable.)

In posse (*in a state of possibility*).

In præparatoriis ad judicium favetur actori. 2 Inst. 57.—(In things preceding judgment the plaintiff is favoured.)

In præsenti (*at the present time*).

In presentiâ majoris cessat potentia minoris. Jenk. Cent. 214.—(In the presence of the major the power of the minor ceases.)

In promptu, in readiness; at hand.

In propriâ personâ (*in one's own proper person*).

Inquest, judicial inquiry.

Inquest, Coroner's. See CORONER.

Inquest of office, an inquiry made by the king's (or queen's) officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. In order to avoid the possession of the Crown acquired by the finding of such office, the subject may have his petition of right *monstrans de droit*, or traverse, as the case may be.—3 *Steph. Com.* See also 22 & 23 Vict. c. 21, s. 15, and 28 & 29 Vict. c. 104, s. 52.

Inquilinus, the hirer of a house.—*Civil Law.*

Inquirendo, an authority given to some official person to institute an inquiry concerning the Crown's interests.

Inquiry, Court of, frequently appointed by the Army authorities to ascertain the propriety of resorting to ulterior proceedings against a person charged before it. The evidence is unsworn. The person charged (if the report of the Court be against him) has no legal right to a court-martial, nor can he obtain any redress from a court of law; the Crown may at any time, without reason assigned, dispense with the services of any person in the army.

Inquiry. The Writ of Inquiry is a judicial process addressed to the sheriff of the county in which the venue is laid, stating the former proceedings in the action, and 'because it is unknown what damages the plaintiff has sustained,' commanding the sheriff that, by the oath of twelve men of his county, he diligently inquire into the same, and return the inquisition into court. This writ is necessary after an interlocutory judgment, the defendant having let judgment go by default, to ascertain the *quantum* of damages.

By R. S. C. 1883, Ord. XIII., r. 5, it is provided that 'Where the defendant fails to appear and the plaintiff's claim is for detention of goods and damages, or either of them, interlocutory judgment may be entered, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be. By Ord. XXXIII., r. 2, the Court or a judge may at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken. Inquiries may be made in district registries (Jud. Act, 1873, s. 66).

Inquisitio post mortem (*inquest after death*).

Inquisition, inquiry, inquest; the founding of the tribunal charged to inquire. The three best known inquisitions are:—

1. A coroner's inquisition, which is (see Coroner's Act, 1887, s. 4, subs. 3) a certificate of the verdict of the jury, 'setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when, and where the deceased came by his death; and if he came by his death by murder or manslaughter, the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder.' The inquisition must be signed by the jurors. A form is given in the second schedule of the Coroners Act, 1887.

2. Inquisition as to lunacy, which is an inquiry directed by the judge in lunacy, as to whether a person is of unsound mind and incapable of managing his affairs. It is held before a jury, if the alleged lunatic demands a jury, unless the judge is satisfied by personal examination that he is not mentally competent to form and express a wish to that effect. See Lunacy Act, 1890, ss. 90—107. By s. 90, subs. 2, the jury may specially find that the alleged lunatic is

incapable of managing himself, but capable of managing his affairs. And see LUNATIC.

3. Inquisition under the Lands Clauses Acts, which is the verdict and judgment, after an inquiry before a sheriff and jury, as to the amount of purchase-money or compensation due to a claimant under those Acts. See s. 50 of the Lands Clauses Act, 1845, which, however, uses the term 'verdict and judgment,' and not 'inquisition.'

Inquisitor, any officer, as a sheriff, coroner, etc., having power to inquire into certain matters.

In quo quis delinquit, in eo de jure est puniendus. Co. Litt. 233.—(One who fails to perform the duties of his office ought to be punished in that office.)

In re (*in the matter of*). An expression used in intituling matters other than actions, in which there is not any plaintiff and defendant, especially in the Court of Bankruptcy.

In rebus manifestis errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda. 5 Co. 67.—(In things manifest he errs who cites legal authorities, because obvious truths need not be proved.)

In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. 10 Co. 101.—(In things that are favourable to the spirit, though injurious to things, an extension of a statute should sometimes be made.)

In re dubia magis inficiatio quam affirmatio intelligenda. Godb. 37.—(In a doubtful case, the negative is rather to be understood than the affirmative.)

In rem. Civil actions are divided into actions *in rem* and actions *in personam.* A judgment *in rem* is a judgment pronounced on the status of some particular subject-matter. Such are actions for the condemnation of a ship in the Court of Admiralty; suits of nullity of marriage, etc., etc. See IN PERSONAM.

In reipublicâ maximè conservanda sunt jura belli. 2 Inst. 58.—(The laws of war are especially to be preserved in the state.)

In restitutionem, non in pœnam hæres succedit. 2 Inst. 198.—(The heir succeeds to the restitution, not to the penalty.)

In restitutionibus benignissima interpretatio facienda est. Co. Litt. 112.—(The most benignant interpretation is to be made in restitutions.)

Inrolment [fr. *irrotulatio*, Lat.]. See ENROLMENT.

Insanity. See LUNATICS.

Inscriptiones, written instruments by which anything was granted.

Insetenta, an inditch, or grave in a ditch.

Insidiatores viarum, way-layers.

Insignia, ensigns or arms.

Insiliarius, an evil counsellor.

Insilium, evil advice or counsel.

In simili materiâ, dealing with the same or a kindred subject-matter.

Insimul computasset (*he accounted together*), a writ or action of account which lay for things uncertain. Obsolete.

Insimul tenuit, a species of the abolished writ of formedon, brought against a stranger by a co-partner on the ancestor's possession.

Insinuatio, registration amongst the public records.—*Civ. Law.*

In solido, in the whole, applied to a joint contract.

Insolvency, the state of one who has not property sufficient for the full payment of his debts. An insolvent, as distinguished from a bankrupt, was an insolvent who was not a trader; for originally only a trader could be made bankrupt, in the sense of obtaining an absolute discharge from his debts, while the future estate of an insolvent remained liable for his debts, even after his discharge. The Acts from time to time in operation for the relief of insolvent debtors were 53 Geo. III. c. 102; 1 & 2 Vict. c. 110, ss. 23—120; 5 & 6 Vict. c. 122; 7 & 8 Vict. c. 96; 8 & 9 Vict. c. 127; 10 & 11 Vict. c. 102; and 'The Bankruptcy Act, 1861' (24 & 25 Vict. c. 134), s. 230. By the 'Bankruptcy Repeal and Insolvent Court Act, 1869' (32 & 33 Vict. c. 83), all the enactments on this subject theretofore existing were repealed, and provision was made for winding up and terminating all matters pending under the Acts for the relief of insolvent debtors. See BANKRUPT.

In specie, in its own form and essence, not in the form of an equivalent: in coin, as distinguished from paper money.

Inspectator, a prosecutor or adversary.

Inspection, examination.

Trial by Inspection was resorted to when, for the greater expedition of a cause, some point or issue, being either the principal question, or one arising collaterally out of it, and being evidently the object of sense, was decided by the judges of the Court upon the evidence of their own senses. Obsolete.

Inspection of written documents. It was provided by 14 & 15 Vict. c. 99, s. 6, that in any action or other proceeding the court or a judge might, on application by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary to take examined copies of the same, or to procure the same to be duly

stamped. Even prior to this Act the Court would, in certain cases, in the exercise of its equitable jurisdiction order inspection of specific documents.

By R. S. C. 1883, Ord. XXXI., rr. 15—18, either party is *primâ facie* as a matter of right entitled to inspect (after notice) documents referred to in the pleadings or affidavits of the other, and may, by leave of a judge, and upon an affidavit, inspect other documents in possession of the other; and by Ord. L., r. 3, any party to a cause may, by order of the court or a judge, inspect any property or thing which is the subject of the cause. By ss. 4 and 5 of the same Order, both a judge and a jury (see also VIEW) have powers of inspection of such property or thing.

Inspection, Deed of. See INSPECTORSHIP.

Inspector, an overseer. There are Government Inspectors of alkali works, of schools, of factories, of mines, and of railways.

Inspectorship, Deed of, an instrument entered into between an insolvent debtor and his creditors, appointing one or more person or persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors. See COMPOSITION; and 32 & 33 Vict. c. 71, ss. 125, 127.

Inspeximus (*we have inspected*), the first word of an ancient charter, or a royal grant. An exemplification of the inrolment of a charter or of letters patent is so called.—*Co. Litt.* 225 *b*; *Page's Case*, 5 *Rep.* 52.

Installation, the ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order.

Instalment, a portion of a debt. When a debt is divided into two or more parts, payable at different times, each part is called an instalment, and the debt is said to be payable by instalments. It is a frequent condition in bonds, warrants of attorney, etc. Also, the giving possession of an ecclesiastical dignity; it is correlative to a rector's or vicar's induction to a benefice.

Instance Court of Admiralty. See ADMIRALTY.

Instanter, immediate; at once.

Trial *instanter* was had where a prisoner between attainder and execution pleaded that he was not the same who was attainted.

When a party is ordered to plead *instanter* he must plead the same day.

Instar dentium [Lat.] (*like teeth*). See INDENTURE.

In statu quo (*in the condition in which it was*). See STATUS QUO.

Instaurum, a stock of cattle.

In stipulationibus cum quæritur quid actum sit verba contra stipulatorem interpretanda sunt. D. 45, 1, 38, s. 18.—(In the construction of agreements words are interpreted against the person using them; thus the construction of the *stipulatio* is against the *stipulator*, and the construction of the *promissio* against the *promissor*.)

Institor, a consignee or factor; one who superintends the business of a store or shop.

Institorial power, the charge given to a clerk to manage a shop or store.—1 *Bell's Com.* by *McLaren*, 506, 507.

Institute, a commentary, a treatise. Also, in Scotland, a person to whom an estate is first given by destination or limitation.

Institutes of Lord Coke, four volumes by Lord Coke, published A.D. 1628. The first is an extensive comment upon a treatise on tenures compiled by Littleton, a Judge of the Common Pleas, temp. Edward IV. This comment is a rich mine of valuable Common Law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. It is usually cited by the name of *Co. Litt.*, or as 1 *Inst.* The second volume is a comment upon old Acts of Parliament, without systematic order; the third a more methodical treatise of the pleas of the Crown; and the fourth an account of the several species of Courts. These are cited as 2, 3, or 4 *Inst.*, without any author's name.

Institution, used in four senses:—(1) Laws, rites, and ceremonies enjoined by authority, as permanent rules of conduct or of government. (2) Putting a clerk into possession of a spiritual benefice, previous to which the oaths against simony and of allegiance and supremacy are to be taken. It is a conveyance or commitment of the cure of souls by the bishop to the incumbent, whereby the benefice becomes filled. The clerk kneels before the ordinary or commissary, having a deputation for that purpose, whilst he reads the words of the institution out of a written instrument, drawn for this purpose, with the episcopal seal appended, which the clerk holds in his hand during the ceremony.

The act of presentation gives the clerk a right *ad rem*; institution gives him a right *in re*; he becomes parson as to the spirituality, may celebrate divine service, enter on the parsonage house and glebe, and take the profits of the benefice; though he cannot grant, or let, or claim a freehold in them, or bring an action for them till induction.

Institution being given to a clerk, a particular entry of it should be made in the register of the ordinary, not only that such a clerk received institution on such a day and year, but if the clerk were presented, at whose

presentation, and whether in his own right or in another's, and if collated or presented by the Crown, then whether *jure pleno* or *per lapsum temporis*. Such entries should be carefully preserved; for the letters of institution may be destroyed or lost, and the patron's title may suffer for want of evidence upon whose presentation institution was given.—*Mirehouse on Advow.*, p. 187. See REFUSING TO INSTITUTE A CLERK. (3) A society for promoting any public object, as a charitable or benevolent institution. (4) In the Civil Law, the appointment of a debtor as heir, i.e., to carry on the legal existence, the *persona* of the testator.

Institutiones. It was the object of Justinian to comprise in his Code and Digest, or Pandects, a complete body of law. But these works were not adapted to the purposes of elementary instruction, and the writings of the ancient jurists were no longer allowed to have any authority, except so far as they had been incorporated in the Digest.—*Smi. Dict. of Antiq.* It was, therefore, necessary to prepare an elementary treatise, and the Institutes were published a month before the Pandects, A.D. 533, and designed as an elementary introduction to legal study (*legum cunabula*). The work was divided into four books, subdivided into titles.

The Institutes are the elements of the Roman law, and were composed, at the command of the Emperor Justinian, by Trebonian, Dorotheus, and Theophilus, who took them from the writings of the ancient lawyers, and chiefly from those of Gaius, especially from his Institutes and his books called *Aureorum* (i.e., of important matters).

The Institutes are divided into four books, each book into several titles, and each title into several parts—the first of which is called *Principium*, and those which follow paragraphs. The first book of the Institute has twenty-six titles, the second twenty-five, the third thirty, and the fourth eighteen; in all ninety-one titles. First, it is to be observed that the division is triple—Persons, Things, and Actions—under which the subject-matter of the four books of the Institutes is comprised. The first book treats of the rights of Persons; the second, third, and five first titles of the fourth, of Things; and Actions are the subjects treated of from the sixth title of the fourth book to the end. The first book treats of Persons, but it is from Title III. only; for the first two, which are by way of introduction, explain Justice, Law, and Right; the meaning of the Right or State of Persons follows in two divisions, which complete the remaining part of the first book.

According to the chief Division of Persons treated of from Title III. to VIII. of the first book, men are either Free or Slaves. The condition of all slaves is the same, but it is not so with freemen, of whom some are free by birth, others by emancipation.

The second Division of Persons begins at Title VIII. of the first book, and is explained in the following titles of that book. It is of independent persons, and of such as are under the power of another. The power of masters over their slaves, and of fathers over their children, is first treated of; after which is shown the manner of acquiring paternal power, viz., by marriage, legitimation, and adoption, and how that power may be lost.

Title XIII. to the end of the first book treats of Pupils, or such as have Tutors; of Minors, or such as have Curators appointed to them; and lastly, of persons who are of age, and masters of their own actions.

In Title XX. matters relating to Curators, and in the last three of this book, three things, common to Tutors and Curators, are treated of. These are: the security they are obliged to give to indemnify Pupils and Minors; the lawful causes exempting persons from being Tutors or Curators, and those for which they may be deprived of their offices.

Things are treated of in Title I. of the second book to Title VI. of the fourth, under three heads—their divisions, the way of acquiring them, and the means by which they become due to us. The divisions are principally two; by the first, things are divided into those which belong to individuals and those which do not; by the second they are corporeal or incorporeal. The property in Things is acquired either by Natural Law or by Civil Law.

Title II. explains the second Division of Things, which are either corporeal or incorporeal; and here real or personal services, as being incorporeal things, are treated of. The modes of acquisition introduced by the Civil Law follow; and the property of Things, according to the Civil Law, acquired either by particular or universal title.

Title VI. treats of Usucaption or just Usurpation and the conditions which it requires, and Title VII. of Donations; Titles VIII. and IX. of those who have the power of alienation, and of those through whom property may be acquired.

Title III. shows how a Testament made in the form prescribed by law, and not invalidated, may be carried into execution, which is done by the heir accepting the succession.

Fiduciary Bequests are treated of in Titles XXIII. and XXIV.

Testamentary Successions, which take place

before all others, are explained in the last fifteen titles of the second book.

Title I. of the third book, and those that follow, treat of Legal Successions, admissible only in default of Testamentary.

Title V. treats of the Succession to Intestates, to which the *cognati*, or female side, were admitted by the Prætorian equity, according to the degree of cognation.

The Title, in conclusion, treats of those who were excluded from this Prætorian succession, because allied to the deceased only by a servile relation.

The succession of Freemen is the subject of Title VII., and the assignment of Freemen that of Title VIII.

After disposing of the question of Succession, which by the Civil Law is the first mode of acquiring property by universal title, the other five modes which followed, by the Prætorian succession, are called *bonorum possessio*; acquisition by abrogation; the adjudication of the goods of a deceased person, in order to make the enfranchisement of slaves effectual; and the two abrogated successions, *per bonorum venditionem* and *ex Senatus-Consulto Claudiano*. Titles IX.—XII.

We then come to the last point relating to Things, viz.: Obligations; being the means whereby things accrue to us. The principal division of them is into two kinds. *Civil*, or those constituted by the laws, or at least recognized by the Civil Law, and *Prætorian*, or those which the Prætor has established by his own authority, also called honorary. There is a further division of obligations into four kinds, for they arise: (1) *ex contractu*; (2) *quasi ex contractu*; (3) *ex maleficio*; (4) *quasi ex maleficio*.—Title XIII., 1 & 2. First it is shown what an Obligation is, and the causes producing a mixed Obligation—that is, partly natural, and partly civil, as a contract, quasi-contract, crime or offence.

Contracts made by words are called Stipulations, the general principles of which are first explained, in order to arrive at the chief divisions of that kind of contract. The first division is of the Stipulation made between the person who demands and him that promises, and of that made between several who stipulate or promise together.

The second is of the Stipulation made by free persons or slaves.

The third is of Stipulations that are called judicial, prætorian, common, or conventional.

The fourth is of Stipulations called equitable (*utiles*), or good in law, and of Stipulations which are *inutiles*.

The fifth is of Principal and Accessory Stipulations, called sureties or cautions.

Title XXII. treats of Written Contracts. The five following titles explain contracts made by the sole consent of the contracting persons which are the contracts of purchase, of hire, of partnership, and of mandate.

Title XXVIII. treats of Quasi-Contracts; the next shows how Obligations are to be acquired; and the last in what manner they may be extinguished. Having spoken of Obligations which arise from contracts or quasi-contracts, the first five titles of the fourth book treat of obligations arising out of faults and quasi faults—*delicta* or *quasi delicta*. The rest of the book, from Title VI. to Title XVI., is devoted to the treatment of Actions. It begins with the definition of an Action, which is followed by several divisions explained in Title VI.; according to the chief and principal of which, Actions are either real, personal, or mixed. The second is of Actions derived from the Civil Law, and such as have their foundations in Prætorian equity. The third is of Actions by which the plaintiff seeks to recover a thing belonging or due to him, and of those by which the punishment of the offender only is aimed at, and of such actions by which both are intended. The fourth division is of actions by which the plaintiff sues for the single, double, treble, or quadruple value of the thing he would recover. The fifth is of Actions of good faith, strict law, and arbitrary.

The sixth is of Actions in which the total of what is due is sued for, and in which the defendant is either not sued for the whole, or in consequence of which he is condemned to pay only so much as his circumstances will allow.

After these divisions of Actions are explained, Title VII. treats of certain Prætorian Actions which are liable to, and which proceed from, contracts made by slaves or children under power, or else by persons to whom they have committed the management of their affairs.

Title VIII. speaks of Actions that may be brought against a master for an error committed by his slave.

Title IX. of Actions to which the owner is liable for the hurt or damage done by a beast.

Title X. directs what persons are to be employed in carrying on lawsuits.

Title XI. treats of the security required of the parties to a suit, or such as appear for them.

Title XII. sets forth the nature of temporary or perpetual Actions, and what Actions the law affords to or against heirs; which those are which lie in their favour, and not against them; and lastly, those which are neither allowed for nor against them.

Title XIII. treats of Exceptions, and Title XIV. of Replications.

Title XV. of Injunctions, or Actions to put the party injured into possession.

Title XVI. declares the Penalty against such as commence vexatious suits.

Title XVII. prescribes Rules to be observed by judges in the several suits brought before them.

And Title XVIII., the last, shows what were the Roman public prosecutions which every one had free liberty to institute, and of which the penalties were established by the laws called *Judiciorum Publicorum Leges.*

The Institutes are quoted in the same manner as the Code and Pandects, with the letter *I.* or *Inst.*: thus, § *si adversus* 12, *I. De Nuptiis*, is nothing more than the twelfth paragraph of the Title *De Nuptiis*, which, on reference to the index, will be found to be the tenth of the first book. This is usually now cited *I.* 1, 10, 12.—1 *Colqu. R. C. L.* s. 61.

Instruct (*v.a.*), to convey information as a client to a solicitor, or as a solicitor to a counsel; to authorise one to appear as advocate.

Instrument [*instrumentum*, Lat., fr. *instruo*, to prepare or provide], a formal legal writing, e.g., a record, charter, deed, or agreement.

Instrumenta, writings not under seal.

In subsidium (*in aid*).

Insucken multures, a quantity of corn paid by those who are thirled to a mill. See THIRLAGE.

Insufficiency, an answer in Chancery was said to be insufficient when it did not specifically reply to the specific charges in the bill.

If a plaintiff conceived an answer to be insufficient, he might take exceptions to it in writing, stating the parts of the bill which he alleged were not answered, and praying that the defendant might in such respect file a further and full answer to the bill. Scandal and impertinence in an answer must have been disposed of before its sufficiency could be considered. See INTERROGATORIES.

For the former practice, see *Dan. Ch. Pr.*, 5th ed., i. 701—716, and ii. 1413.

Insuper, debiting or charging a person in an account.—*Exchequer term.* See an example of its use in Taxes Management Act, 1880, 43 & 44 Vict. c. 19, s. 112.

Insurance, the act of providing against a possible loss, by entering into a contract with one who is willing to give assurance, that is, to bind himself to make good such loss should it occur. In this contract, the chances of benefit are equal to the insurer and the insured. The first actually pays a certain sum, and the latter undertakes to pay a larger, if an accident should happen. The one renders his property secure; the other receives money with the probability that it is clear gain. The instrument by which the contract is made is called a policy; the stipulated consideration a premium. It is generally made to provide either against risks at *sea*, or losses by *fire*, or *death*, or death or injury by accident.

Insurances are effected sometimes by companies or societies, and sometimes by individuals, the risk being in either case diffused amongst a number of persons. Companies formed for carrying on this business have generally a large subscribed but uncalled capital, so as to enable them to raise large sums to make good extraordinary losses.

(I.) The practice of marine insurance is older than insurance against fire and upon lives.

While all fire and life insurances are made at the risk of companies, which include within themselves the requisites of security, wealth, and numbers, a large proportion of marine insurances is made at the risk of individuals called underwriters.

Until 1824, all firms and companies, with the exception of the two chartered companies —the Royal Exchange and London—were prohibited from taking marine insurances. The prohibition was then removed and the business of marine insurance was placed on the same footing as other business. There are now, in London, the two old chartered companies, the Royal Exchange and London; two established upon the passing of the Act of 1824, the Alliance and the Indemnity Mutual; the Marine, established in 1836, and the General Maritime and Neptune in 1839; and many others since.

The underwriters meet in a subscription room at Lloyds. The joint affairs of the subscribers to these rooms are managed by a committee chosen by the subscribers. Agents (who are commonly styled Lloyd's agents) are appointed in all the principal ports of the world, who forward regularly to Lloyds accounts of the departures of ships from, and arrivals at, such ports, as well as of losses and other casualties; and, in general, all such information as may be supposed of importance towards guiding the judgments of the underwriters. These accounts are regularly filed, and are accessible to all the subscribers. The principal arrivals and losses are besides posted in two books, placed in two conspicuous parts of the room; and also in another book, which is placed in an adjoining room, for the use of the public at large.

The rooms are open from 10 a.m. till 5 p.m; but the most considerable part of the business is transacted between one and four.

Merchants and shipowners who manage their own insurance business procure blank policies, which they fill up to meet the case, and submit them to underwriters, by whom they are subscribed or rejected. Each policy is handed about in this way until the amount required is complete. Merchants and shipowners also give orders to insurance-brokers, who undertake and are responsible for the business of insuring; and to them likewise are transmitted the orders for insurance from the outports and manufacturing towns.

The common *form* of policy is that in the repealed schedule E. to 30 Vict. c. 23.

Besides individual underwriters and companies, there are associations formed by shipowners, who agree, each entering his ships for a certain amount, to divide the losses sustained by any of them. These are institutions of long standing, but since the alteration of the law in 1824, appear to be on the decline. Their formation originated in a two-fold reason: 1st, that the underwriters charged premiums more than commensurate with the risk; and, 2ndly, that they did not afford adequate protection.

The losses against which a merchant or shipowner is not protected by an insurance in this country are the following:—

(1) Acts of our own Government. (2) Breaches of the revenue laws. (3) Breaches of the law of nations. (4) Consequences of deviation. (5) All losses arising from unseaworthiness. Unseaworthiness may be caused in various ways, such as want of repair, want of stores, want of provisions, want of nautical instruments, insufficiency of hands to navigate the vessel, or incompetency of the master. (6) All loss arising from unusual protraction of the voyage. (7) All loss to which the shipowner is liable when his vessel does damage to others. (8) Average clause.

Average is a name applied to a certain description of loss, to which the merchant and shipowner are liable. There are two kinds of average—general and particular:

(*a*) General average comprehends all loss arising out of a voluntary sacrifice of a part of either vessel or cargo, made by the captain for the benefit of the whole. If a captain throw part of his cargo overboard, cut loose an anchor and cable, or cut away his masts, the loss is distributed over the value of the ship and cargo as general average.

(*b*) Particular average comprehends all loss occasioned to ship, freight, and cargo, which is not of so serious a nature as to debar them from reaching their port of destination, and when the damage to the ship is not so extensive as to render her not worth repairing.

Losses where the goods are saved, but in such a state as to be unfit to forward to their destination, and where the ship is rendered unfit to repair, are called 'partial or salvage loss.' The leading distinction between particular average and salvage loss is, that in the first, the property insured remains the property of the assured, the damage sustained being made good by the insurer; in the second the property is abandoned to the insurer, and the value insured claimed from him, he retaining the property so abandoned. See CONSTRUCTIVE TOTAL LOSS.

All the elements of general average may be classed under four heads: (1) Sacrifice of part of the ship and stores. (2) Sacrifice of part of the cargo and freight. (3) Remuneration of service required for general preservation. (4) Expense of raising money to replace what has been sacrificed, and to remunerate services. See *Arnould on Marine Insurance.*

(II.) Insurance against fire is a contract of indemnity (see *Darrell* v. *Tibbits*, 5 C. P. D. 560), by which the insurer, in consideration of a certain premium received by him in a gross sum or by annual payments, undertakes to indemnify against all loss or damage to houses or other buildings, stock, goods, and merchandise, by fire during a specified period.

Insurances against fire are hardly ever made by individuals, but almost always by corporations or joint-stock companies, of which there are several in all the considerable towns throughout the empire.

The conditions on which the different offices insure are contained in the proposals printed on the back of the policies, and it is in most instances expressly conditioned that they undertake to pay the loss, not exceeding the sum insured, 'according to the exact tenor of their printed proposals.'

Sometimes no one office will insure to the amount required; and in such a case it is done by different offices. To prevent frauds by insuring the full value in various offices, there is, in the proposals issued, an article requiring notice of any other insurance upon the same houses or goods, that the same may be specified and allowed by indorsement, so that each office may bear its proportion of loss; and, unless such notice is given, the insurance is void.

The risk commences in general from the signing of the policy, unless there be some other time specified. Policies of insurances may be annual, or for a term of years at an annual premium; and it is usual for the office, by way of indulgence, to allow fifteen days after the expiration of each year for the payment of the premium for the next year; and provided the premium be paid within

that time, the insured is considered as within the protection of the office.

Insurances are generally divided into common, hazardous, and doubly hazardous.

(*a*) *Common* insurances.—(1) Buildings covered with slates, etc., and built with brick or stone, etc., and wherein no hazardous trade or manufacture is carried on, or hazardous goods deposited. (2) Goods in buildings as above described, such as household goods, plate, etc. The premium upon these, with certain exceptions, is 1*s.* 6*d.* per cent. per annum.

(*β*) *Hazardous* insurances.—(1) Buildings of timber or plaster, or not wholly separated by partition-walls of brick or stone, or not covered with slates, etc., and thatched barns having no chimney, but in which hazardous goods are deposited, etc. (2) Ships and craft, with their contents (lime barges, with their contents, alone excepted). At 2*s.* 6*d.* per cent. per annum, with certain exceptions.

(*γ*) *Doubly Hazardous* insurances.—(1) Thatched buildings having chimneys, etc., and hazardous buildings in which hazardous goods are deposited, etc. (2) All hazardous goods deposited in hazardous buildings and in thatched buildings having no chimney, nor adjoining to any building having a chimney. At 4*s.* 6*d.* per cent. per annum, with certain exceptions.

The stamp duty of 1*s.* 6*d.* formerly payable in respect of insurances against fire has been abolished by 32 & 33 Vict. c. 121, s. 12.

As to relief against forfeiture for not insuring against fire according to covenants in a lease, see FORFEITURE.

(III.) There are three classes of life insurance companies. The first class consists of corporations or joint-stock companies, who undertake to pay *fixed* sums upon the death of the individuals insuring with them; the profits made by such companies being wholly divided among the proprietors. Of this class are the Royal Exchange, Globe, etc. The second class are also corporations, or joint-stock companies, with proprietary bodies; but instead of undertaking to pay specified sums upon the death of the insured, they allow the latter to participate to a certain extent in the profits of the business. The mode is not the same in all; in some the principle on which the allotment is made is not disclosed. The Rock, Sun, Alliance, Guardian, Atlas, etc., belong to this mixed class. The third species of company is that which is formed on the basis of mutual insurance. In this there is no proprietary body distinct from the assured: the latter share among themselves the whole profits of the concern, after deducting the expenses of management. The Equitable Society, the Amicable, the Norwich Life, etc., belong to this class.

To hinder gambling transactions upon life insurance, it was enacted by 14 Geo. III. c. 48, that no insurance should be made by any person on the life of any person, or any other event wherein the person for whom the policy should be made, *shall have no interest*, or by way of wager; and that every insurance made contrary to that Act should be void. As to abatement of income-tax in respect to insurance on lives, see 16 & 17 Vict. c. 91, continued by 20 & 21 Vict. c. 5.

By the 'Life Assurance Companies Act, 1870' (33 & 34 Vict. c. 61), many important provisions have been introduced for the regulation of life assurance companies, requiring *inter alia* that every company shall prepare a yearly statement of its revenue and of its balance-sheet according to prescribed forms, and shall cause certain periodical investigations to be made into its affairs, and prepare and furnish to shareholders and policy holders certain periodical statements of its business, etc. See an amending Act, 34 & 35 Vict. c. 58, again amended by 35 & 36 Vict. c. 41.

By the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, s. 11, where a married man or woman insures his or her life expressly for the benefit of his or her wife, husband, or children, the policy moneys are not subject to his or her debts, unless an intent to defraud creditors be proved.

The 30 & 31 Vict. c. 144, enables assignees of life policies to sue in their own names; and the 31 & 32 Vict. c. 86, gives a similar power to the assignees of marine policies. In either case the assigment may be made by indorsement. See also the Judicature Act, 1873, s. 25, which in certain cases entitles the assignees of a *chose in action* to the legal right in such *chose in action*.

Intakers, receivers of stolen goods.

Integer. See RES INTEGRA.

Intendent, a person who has the charge, direction, and management of some office or department.

Intendment, the true meaning.

Intentio, a count.—*Bract.*

Intentio cæca mala. 2 Buls. 179.—(A hidden intention is bad.)

Intentio inservire debet legibus, non leges intentioni. Co. Litt. 314.—(Intention ought to be subservient to the laws; not the laws to the intention.)

Intentio mea imponit nomen operi meo. Hob. 123.—(My intent gives a name to my act.)

Intentione, a writ that lay against him who entered into lands after the death of a

tenant in dower, or for life, etc., and held out to him in reversion or remainder.—*F. N. B.* 203.

Inter alia (*amongst other things*).

Inter canem et lupum (*between the dog and the wolf*), twilight; called also mock shadow, daylight's gate, and betwixt hawk and buzzard.—*Cowel.*

Intercedere, to become bound for another's debt.—*Civ. Law.*

Intercommoning, where the commons of two manors lie together, and the inhabitants of both have time out of mind depastured their cattle promiscuously in each. See COMMON.

Interdict, Interdiction, an ecclesiastical censure prohibiting the administration of divine ceremonies, either to particular persons or in particular places, or both. This severe censure has been long disused. In the Civil Law interdicts were certain *formulæ* by which the process ordered or forbade something to be done; they were chiefly employed in disputes as to possession, or *quasi* possession, and were nearly equivalent to our writ of injunction. For a division of them see *Sand. Just.*, 7th ed., 489. Also in Scotch law, an injunction.

Interdiction of fire and water [*interdictio ignis et aquæ*, Lat.], banishment by an order that no man should supply the person banished with fire or water, the two necessaries of life.

Interesse termini, an executory interest, being a right of entry which a lessee acquires in land by virtue of a demise. It cannot, before entry, be enlarged by a release from the lessor (*except* the term be created by an assurance under the Statute of Uses, which does not require an entry), because the lessee has no actual estate; yet such a release would extinguish the rent and also the *interesse termini*. The lessee can assign this interest, but it will not merge in the freehold subsequently acquired.

Interest, money paid or allowed for the loan or use of some other sum, lent at a fixed rate. The sum lent is called the *principal*, the interest is called the *rate per cent.*, and the principal and interest added together is called the amount. It is distinguished into simple and compound. (1) *Simple* interest is that which is paid for the principal or sum lent, at a certain rate or allowance made by law, or agreement of parties. (2) *Compound* interest is when the arrears of interest of one year are added to the principal, and the interest for the following year is calculated on that accumulation. By 3 & 4 Wm. IV. c. 42, s. 28, interest at a rate not exceeding the current rates may be recovered, if and as *a jury think fit*, upon debts payable at a certain time or otherwise, if such debts be payable by virtue of some written instrument at a certain time, or, if payable otherwise, then from the time when demand of payment shall have been made in writing, with a notice that interest will be claimed until payment. By s. 29, damages in the nature of interest may in like manner also be recovered in actions for taking away goods, or on policies of assurance. Judgments carry interest at four per cent. (1 & 2 Vict. c. 110, s. 17). By the 'Attorneys and Solicitors Act, 1870' (33 & 34 Vict. c. 28, s. 17), the taxing officer may allow interest on moneys disbursed by a solicitor for his client, and on moneys of the client in the hands of the solicitor and improperly retained by him.

See also USURY.

2. A chattel-real, as a lease for years, or a future estate (1 *Inst.* 46), or indeed any estate, right, or title in realty.—1 *Inst.* 345.

3. Such a personal advantage derivable from his judgment as disqualifies a judge from hearing the cause by virtue of the rule '*Nemo debet judex esse in causâ suâ propriâ*,' as where the judge is a shareholder in a company which is plaintiff or defendant in an action. See *Dimes* v. *Grand Junction Canal Co.*, 3 *H. L. C.* 759.

Interest reipublicæ ne maleficia remaneant impunita. Jenk. Cent. 31; Wing. 140.—(It is the concern of the State that evil deeds do not go unpunished.)

Interest reipublicæ suprema hominum testamenta rata haberi. Co. Litt. 236 *b.*—(It is the concern of the State that last wills should be given effect to.)

Interest reipublicæ ut sit finis litium. Co. Litt. 303.—(It concerns the State that there be an end of lawsuits.) See LIMITATION.

Interest suit. An action in the Probate Branch of the High Court of Justice, in which the question in dispute is as to which party is entitled to a grant of letters of administration of the estate of a deceased person.

Interest upon interest, compound interest.

Interested witness, a witness is not excluded from giving evidence by reason of his interest in the matter in question.—6 & 7 *Vict.* c. 85, s. 1. See INCOMPETENT WITNESS.

Interim order, one made in the meantime, and until something is done.

Interlineation, the insertion of any matter in a written instrument after it is engrossed or executed. A deed may be avoided by interlineation, unless a memorandum be made thereof at the time of the execution or attestation. If there be any interlineation or erasure in the *jurat* of an affidavit, that affidavit cannot be read, unless authenticated

by initials of officer, etc.—*R. S. C.* 1883, Ord. XXXVIII., Rule 12.

Interlocutory. An interlocutory order or judgment is that which is made or given during the progress of an action, and does not finally determine it; e.g., an order for inspection or production of documents, and a motion for such an order is termed an interlocutory motion. For rules as to interlocutory orders in proceedings in the Supreme Court, see Jud. Act, 1875, Ord. LII.

Interloper [fr. *inter*, Lat., between, and *loopen*, to run], a person who intercepts the trade of others.

Interment Acts. 16 & 17 Vict. c. 134; 18 & 19 Vict. c. 128; 27 & 28 Vict. c. 97; and see BURIAL.

International copyright. See COPYRIGHT, and 38 & 39 Vict. c. 53.

International law, the law of nations, strictly so called, was in a great measure unknown to antiquity, and is the slow growth of modern times, under the combined influence of Christianity and commerce.

It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. They can bind only its own subjects and others who are within its jurisdictional limits; and the latter only while they remain therein. No other nation, or its subjects, are bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutuæ vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities.

The first and most general maxim stated in international jurisprudence is that every nation possesses an exclusive sovereignty and jurisdiction in its own territory.

Another maxim is, that no state or nation can, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, natural-born subjects or others. This is a natural consequence of the first proposition.

From these two maxims flows a third, that whatever force the laws of one country have in another, depends solely upon the municipal laws of the latter.

Huberus has laid down that all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof: and that the rulers of every empire, from comity, admit that the laws of every people, in force within its own limits, ought to have the same force everywhere, so far as they do not prejudice the powers or rights of other governments, or of their citizens. Lib. 1, title. 3. *De Conflictu Legum*, s. 2, p. 538; *Story's Conflict of Laws*, cc. i. and ii.; *Wheaton's International Law*; and *Westlake's Pr. Intern. Law.*

Internuncio, or **Internuncius,** a messenger between two parties; also, the pope's representative in other countries.

Interpellation, a citation or summons.

Interpleader, the process whereby a person, who is or expects to be sued by two or more parties, claiming adversely to each other, for a debt or goods in which he has no interest, obtains relief by procuring such parties to try their rights between or amongst themselves only. Where the applicant is a sheriff, and claim is made to goods seized in execution by any other than the person against whom the execution is sued, the process is called a 'sheriff's interpleader.' At one time an independent suit in Equity, called a 'bill of interpleader,' had to be brought against the two rival claimants by the person having no interest, but the Interpleader Act, 1 & 2 Wm. IV. c. 58, instituted a more simple and expeditious procedure, whereby the Court in which such person was sued might call the rival claimants before it, and stay the action against such person; and this Act, with its amendments under the C. L. P. Act, 1860, was incorporated, but by reference only, into the Rules of Court of 1875. In 1883 the two Acts were thrown expressly into the form of rules by R. S. C. 1883, Ord. LVII., the Acts themselves being repealed by the Statute Law Revision and Civil Procedure Act of the same year.

Interpleader Acts, 1 & 2 Wm. IV. c. 58, and 23 & 24 Vict. c. 126, ss. 12, 18. See INTERPLEADER.

Interpleader, Bill of. See INTERPLEADER.

Interpretare et concordare leges legibus est optimus interpretandi modus. 8 Co. 169.—(To interpret and to reconcile the laws to laws is the best mode of interpretation.)

Interpretatio fienda est ut res magis valeat quam pereat. Jenk. Cent. 198.—(Such an interpretation is to be adopted, that the thing may rather stand than fall.)

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum. 4 Inst. 328.—(In doubtful matters, such an interpretation is to be made that inconvenience and absurdity may be avoided.)

Interpolate, to insert words in a complete document.

Interpolation, the act of interpolating; the words interpolated.

Interpretation Act, 1889, 52 & 53 Vict. c. 63. A most important statute, repealing and re-enacting Lord Brougham's Act of 1850, 13 Vict. c. 21, 'for shortening the language used in Acts of Parliament' and other similar Acts, and further shortening such language. By this Act, *in Acts passed after* 1850, words importing the masculine gender include females, words in the singular include the plural, and words in the plural include the singular: also, definitions are provided of 'month,' 'land,' 'parish' (see those titles), and other terms.

The Act also provides that—

Statutory powers to make rules, etc., may be exercised from time to time, and the power to make rules, etc., includes a power to rescind or amend them (s. 32).

Where an offence is committed against more Acts than one, the offender may be prosecuted under any of such Acts (s. 33).

Statutory powers to make rules, etc., may be exercised at any time after the passing, and before the commencement, of any Act which does not commence immediately on its passing (s. 37). It is also provided that—

'Where this Act, or any Act passed after the commencement of this Act (*i.e.*, after 1st January, 1890), repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted, (s. 38). This is a generalisation of a modern form in consolidating Acts: see, e.g., s. 313 of the Public Health Act, 1875, and s. 102 of the Factory and Workshop Act, 1878.

As to further provisions of the Act, see DISTANCE, MONTH, PARISH, REPEAL, SERVICE, STATUTORY DECLARATION.

Interpretation clause, a section of an Act of Parliament which defines the meaning of certain words occurring frequently in the other sections.

Interpreters, persons sworn at a trial to interpret the evidence of a foreigner or a deaf and dumb person to the Court.

Interregnum, the time during which a throne is vacant in elective kingdoms; for in such as are hereditary, as in England, there can be no interregnum, the sovereign in his artificial capacity, never dying.

Interrogatories, written questions addressed on behalf of one party to a cause, before the trial thereof, to the other party, who is bound to answer them in writing upon oath.

In the Courts of Equity either party could from very early times interrogate the other. In the courts of law, this power was first given by the Common Law Procedure Act, 1854, s. 51, which, however, only allowed it to be exercised by leave of the Court or a judge. The Judicature Act, Ord. XXXVI., dispensed with this leave, allowing the interrogated party to apply to have interrogatories struck out, on the ground of irrelevancy or on other grounds; but the Rules of 1883 not only restored the requirement of this leave except in cases of fraud or breach of trust, but made a deposit of 5*l.*, at least, a condition precedent to administering the interrogatories. R. S. C. 1883, Ord. XXXI., Rules 1, 26.

By an Order in Council dated the 18th November, 1867, the provisions of the C. L. P. Act, 1854, in regard to interrogatories, were extended to the County Courts.

In terrorem (*by way of terrifying*). Where a condition which the law will not carry out is attached to a gift or a legacy, as where a legacy is left to a single woman on condition that she will not marry, this condition is said to be *in terrorem* only, and void.

Interruptio multiplex non tollit præscriptionem semel obtentam. 2 Inst. 654.—(Frequent interruption does not take away a prescription once secured.)

Interruption, a term applied in Scotch Law to the step requisite by law to stop the running of the period of limitation.—*Bell's Dict.*

Intervention. A third person not originally a party to a suit, but claiming an interest in the matter, may interpose at any stage of the suit in defence of his own interest, whenever affected, either as to person or property. This is called intervention, and was peculiar to the Ecclesiastical and Admiralty Courts. It is now practised in actions or suits in the Probate, Divorce, and Admiralty Division of the High Court. An intervener must take the cause as he finds it at the time of his intervention, and can only do what he might have done had he been a party in the first instance; but the Court may relax this rule under special circumstances.

In probate actions, any person not named in the writ may intervene and appear in the action as heretofore on filing an affidavit showing how he is interested in the estate of the deceased (Jud. Act, 1875, Ord. XII., r. 16). And in an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry (*Ibid.*, r. 17). As to actions for the recovery of land, see *Ibid.*, r. 18.

By 23 & 24 Vict. c. 144, s. 7, the Queen's proctor, or any other person, may intervene in

any suit for the dissolution of marriage, on the ground that the parties have been guilty of collusion, or that material facts have been suppressed. By 29 & 30 Vict. c. 32, s. 3, no decree *nisi* for a divorce can be made absolute until after six months from the pronouncing thereof. The 36 Vict. c. 31 extends to proceedings for nullity of marriage the provisions of these two sections.

In testamentis plenius testatoris intentionem scrutamur. 3 Buls. 103.—(In wills we more especially seek out the intention of the testator.)

In testamentis plenius voluntates testantium interpretantur. D. 50, 17, 12.—(In wills the intention of testators is more especially regarded): 'that is to say,' says Mr. Broom (*Max.*, 6th ed., p. 525), 'a will will receive a more liberal construction than its strict meaning, if alone considered, would permit.'

In testamentis ratio tacita non debet considerari sed verba solum spectari debent, adeo per divinationem mentis a verbis recedere durum est.—(In wills, an unexpressed meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing at the intention.)

Intestate, one who has left no will. If he leaves no heir his real property escheats (see ESCHEAT) to the Crown or lord of the manor, and his personal property is administered by a nominee of the Crown for the benefit of the Crown. *Swinburne, Godolphin,* and others of the earlier writers on the subject, apply the term to one who dies leaving a will, but not appointing an executor; the term *testament* being formerly applied only to a will which appointed an executor. See *Swinburne,* pt. 1, s. 1; and 1 *Williams on Executors,* 6. As to the grant of administration to the widows and children of intestates through the registrars of County Courts, see 36 & 37 Vict. c. 52, and 38 & 39 Vict. c. 27; and as to similar proceedings in Scotland, see 38 & 39 Vict. c. 41. See DISTRIBUTION and ADMINISTRATOR.

Intestate Estates Act, 1884, 47 & 48 Vict. c. 71, whereby administration for the Crown of the personal estate of an intestate is conducted on similar principles to those of an ordinary administration, his equitable estate and estate in incorporeal hereditaments escheats to the Crown as well as his real estate and estate in corporeal hereditaments, and further provision is made for the waiver of escheat.

Intestate Estates Act, 1890, 53 & 54 Vict. c. 29, whereby the real and personal estate of every man dying after the 1st September, 1890, leaving a widow but no issue, is directed to belong to his widow if the net value should not exceed 500*l.*, while if it should exceed 500*l.* the widow obtains a charge upon the whole of it for 500*l.*, 'with interest thereon from the date of the death of the intestate, at 4 per cent. per annum until payment'; whereas, by the Statute of Distributions (see DISTRIBUTIONS), the widow was in such a case entitled to one half only of the personal estate, however small, the other half going to the next of kin, and to dower for life only (see DOWER) out of the real estate, however small in value.

Intestatus decedit, qui aut omnino testamentum non fecit; aut non jure fecit; aut id quod fecerat ruptum irritumve factum est; aut nemo ex eo hæres existit. Civil Law.—(A person dies intestate who either has made no testament at all, or has made one not legally valid; or if the testament he has made be revoked, or made useless; or if no one becomes heir under it.)

Intol and **Uttol,** toll or custom paid for things imported or exported.

In totidem verbis (*in so many words*).

In toto, altogether.

In toto et pars continetur. D. 50, 17, 113. —(In the whole a part is also contained.)

Intoxicating liquors. The sale of intoxicating liquors by retail is regulated by numerous statutes, of which the principal are the Licensing Act, 1828, 9 Geo. IV. c. 61; the Wine and Beerhouse Act, 1869, 33 & 34 Vict. c. 27; the Licensing Act, 1872, 35 & 36 Vict. c. 94; the Licensing Act, 1874, 37 & 38 Vict. c. 49; and the Beer Dealers' Retail Licenses Amendment Act, 1882, 45 & 46 Vict. c. 34. The effect of these statutes is shortly as follows:—

1. Two licenses are in every case (except where the sale is to be in theatres or on packet-boats, or of methylated spirits or spruce, or by the holders of wholesale spirit or wine licenses) required; one from the justices of the peace, and one from the inland revenue, the first discretionary, and the second obtainable as of right on production of the justices' license. The justices' license is grantable only at a 'general annual licensing meeting,' held in every division of a county, and in every borough having a separate commission of the peace, in March in Middlesex and Surrey, and between the 20th August and the 14th September elsewhere.

2. The licenses are either (*a*) general, authorising the sale of any kind of liquor to be drunk either on or off the premises where sold, or (*b*) particular, authorising the sale of only wine or beer or spirits, as the case may be, to be drunk on and off, or only off the premises where sold, as the case may be. The

general license is commonly called an 'alehouse license' or a 'public-house license.'

3. Each license is expressed to be for one year only.

4. A 'new license,' i.e., a license in respect of premises not theretofore licensed for the sale of liquor to be drunk on the premises, requires confirmation by a second body of justices, from whose refusal to confirm there is no appeal.

5. A license granted by way of renewal requires no such confirmation. From a refusal to grant it there is an appeal to quarter sessions. Holders of certain wine and beer licenses for sale of these liquors not to be drunk on the premises where sold, or for any sale by retail if first granted before 1869 (before which year wine and beer might be sold without a justices' license), have special privileges, it being expressly enacted by s. 8 of the Wine and Beerhouse Act, 1869, that no renewal of such licenses may be refused except on the ground of the applicants not producing satisfactory evidence of good character, etc., and the holders of spirit and liqueur licenses for sale of these liquors not to be drunk on the premises have similar privileges under s. 69 of the Licensing Act, 1872.

But justices have, beyond all doubt, an absolute discretion (subject to compliance with procedure as to notices, etc., under s. 42 of the Licensing Act, 1872, and s. 26 of the Licensing Act, 1874) to refuse to renew the general 'public-house license,' as was expressly held by the House of Lords in 1891, affirming all the decisions below, in *Sharp* v. *Wakefield*, though it is believed that, prior to that decision, the usual practice was to renew such licenses in all cases except where actual misconduct on the part of the holder was shown.

6. The holders of licenses are subject to very strict police regulations. Their houses must be closed at certain hours, and may be entered by the police at any time. They are subject to penalties for permitting drunkenness or gaming, for harbouring constables or prostitutes, and other offences. In some cases the convicting justices may 'record' a conviction on the offender's license, and a third conviction after two recorded convictions entails forfeiture of the license.

In traditionibus scriptorum non quod dictum est sed quod gestum est inspicitur. 9 Co. 137.—(In the traditions of writers, not what is said, but what is done is regarded.

In transitu (*during the passage*). See STOPPAGE IN TRANSITU.

Intrare mariscum, to drain a marsh or low ground, and convert it into herbage or pasture.

Intrinsecum servitium, common and ordinary duties with the lord's court.—*Kenn. Gloss.*

Intromission, the assuming possession and management of property belonging to another either on legal grounds or without any authority, which latter is termed *vicious intromission.—Scotch Law.*

Intruder. See INTRUSION.

Intrusion, the entry of a stranger after a particular estate of freehold is determined before him in reversion or remainder. Where a tenant for life dies seised of certain lands or tenements, and a stranger enters thereon after such death of the tenant, and before any entry of him in remainder or reversion, such stranger is called an intruder.

The writ of entry on intrusion is abolished by 3 & 4 Wm. IV. c. 27. See ABATEMENT.

Intrusion, Information of. See INFORMATION.

Inure, to take effect.—*Cowel.*

Inutilis labor, et sine fructu, non est effectus legis. Co. Litt. 127.—(Useless labour, and without fruit, is not the effect of law.)

In vacuo, without object; without concomitants, or coherence.

Invadiare, to pledge or mortgage lands.

In vadio (*in gage; in pledge*).

Invasiones, the inquisition of serjeanties and knights' fees.—*Cowel.*

Invecta et illata. This term, in questions of hypothec and thirlage, applies to the articles brought within the tenement or within the thirl. See *Bell's Scotch Law Dict.*

Invention, Title by, the mode of acquiring an ownership in patent-rights and copyrights. See COPYRIGHT and LETTERS PATENT.

Inventiones, treasure-trove.—*Cowel.*

Inventory, a list or schedule, containing a true description of goods and chattels, or furniture, etc., made upon a sale, or by an executor of his testator's effects, or by an administrator of those of the intestate. See EXECUTOR.

In ventre sa mère (*in his mother's womb*). See UNBORN CHILD.

In verbis non verba sed res et ratio quærenda est. Jenk. Cent. 132.—(In [the construction of] words, not the mere words, but the thing and the meaning are to be inquired after.)

Inveritare, to make proof of a thing.—*Jacob.*

Invest, to give possession, or lay out money. When a trustee, executor, or administrator is not expressly forbidden to invest in real securities in the United Kingdom, or stock of the Bank of England or Ireland, or East Indian Stock, such trustee, etc., may invest therein, and not be liable for breach of trust.—22 & 23 *Vict.* c. 35, s. 32.

Investiture, the open delivery of seisin or possession.

In viridi observantiâ, present to the minds of men, and in full force and operation.

Invito beneficium non datur. D. 50, 17, 69.—(A benefit is not conferred on one who is unwilling to receive it): that is to say, no one can be compelled to accept a benefit.

Invito domino [Lat.] (*without the assent of the lord or owner.*)

In vocibus videndum non à quo sed ad quid sumatur. Ellesm. Postn. 62.—(In discourses it is to be seen not from what, but to what, it is advanced.)

Invoice [perhaps corrupted fr. *envoyez*, Fr., send], a written account of the particulars of goods sent or shipped to a purchaser, factor, etc., with the value, or prices, or charges annexed.

Iota, the minutest quantity possible. Iota is the smallest Greek letter. The word 'jot' is derived therefrom.

I O U, a written acknowledgment of a debt, so called because it commences with those letters, which custom has substituted for the words, *I owe you*, because they have the same sound. It ordinarily runs thus:

'To Mr. A. B., I O U Twenty pounds. C. D. January 1st, 1863.'

If in the above form, it requires no stamp, being neither receipt, agreement, nor promissory note. If it contains a promise to pay the money, it must be stamped as a promissory note, or, as an agreement, if it contain terms of agreement, the subject of which is of the value of 5*l.* It should be addressed to the creditor by name, but that is not essential to its validity. It is evidence of an account stated with the creditor, if named: if he is not named, it is *primâ facie* evidence of an account stated with the person producing it. It is not negotiable.

Ipse dixit (*he himself said it*, Lat.), a bare assertion resting on the authority of an individual.

Ipsæ leges cupiunt ut jure regantur. Co. Litt. 174.—(The laws themselves require that they should be governed by right.)

Ipso facto (*by the very act itself*). A censure of excommunication in the Ecclesiastical Court, immediately incurred for divers offences, after lawful trial.

Ire ad largum (*to go at large; to escape; to be set at liberty*).

Ireland, was a distinct kingdom until the 1st of January, 1801, when the 'United Kingdom of Great Britain and Ireland' was formed.—39 & 40 *Geo. III.* c. 67; 40 *Geo. III.* c. 38. See SCOTLAND AND IRELAND.

Irish Church Disestablishment Act, 1869, 32 & 33 Vict. c. 42, amended by 35 & 36 Vict. cc. 13, 90; see, too, 38 & 39 Vict. c. 42.

Irish Constabulary. See 37 & 38 Vict. c. 80; 36 & 37 Vict. c. 74; and 38 & 39 Vict. c. 44.

Irish Judgment. A judgment of the High Court of Justice in Ireland is enforceable after registration of a certificate thereof by the High Court of Justice in England, under the Judgment Extension Act, 1869, 31 & 32 Vict. c. 64; and a judgment of an inferior Court in Ireland is similarly enforceable by an English County Court, under the Inferior Courts Judgments Extension Act, 1882, 45 & 46 Vict. c. 31.

Irish Land Acts. 'The Landlord and Tenant (Ireland) Act, 1870,' 33 & 34 Vict. c. 46 (amended by 35 & 36 Vict. c. 32), and 'The Land Law (Ireland) Act, 1881,' 44 & 45 Vict. c. 49. By the Act of 1870, provision is made for giving the tenant compensation for improvements, and for 'disturbance,' etc. By the Act of 1881, the Act of 1870 is amended in favour of the tenant, and provision is made for the sale by a tenant of his holding, and for fixing the amount of rent by a Court. See also ASHBOURNE ACT.

Irish Presbyterian Church Act, 1871, 34 Vict. c. 24.

Irish Reproductive Loan Fund. See 11 & 12 Vict. c. 115; and 37 & 38 Vict. c. 86.

Irregularity, disorder, going out of rule; also an impediment to taking holy orders.

As to irregularities at Common Law, see 2 *Chit. Arch. Prac.*, and in Equity, *Sm. Ch. Pr.* 168; and see the Jud. Act, 1875, Ord. LIX., by which non-compliance with rules subjects proceedings to be set aside as irregular.

Irrepleviable, or **Irreplevisable**, that which cannot be replevied or delivered on sureties.

Irrevocable, incapable of being revoked; powers of appointment are sometimes executed so as to be irrevocable (see POWERS OF APPOINTMENT); no will is ever irrevocable.

Irritancy, the becoming void; forfeiture.

Irritant clause, a provision by which certain prohibited acts specified in a deed are, if committed, declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void.—*Scotch Law.*

Is cui cognoscitur.—(He to whom it is acknowleged, i.e., a cognisee.)

Is qui cognoscit.—(He who acknowledges, i.e., a cognisor.)

Isle of Man. See MAN, ISLE OF.

Issint [Nor. Fr.], thus, so.

Issuable plea, a plea on which a plaintiff may take issue, and go to trial upon the merits. See now STATEMENT OF DEFENCE.

Issuable terms. Hilary and Trinity were so called because in them issues were made up for the assizes. But for town causes, all the

four terms were issuable. The division of the legal year into terms is now abolished, so far as relates to the administration of justice (Jud. Act, 1873, s. 26).

Issue [fr. *exitus*, Lat.], used in several senses:—(1) The legitimate offspring of parents. The word issue in a will is either a word of purchase or of limitation, as will best answer the intention of the testator, though in the case of a deed it is universally taken as a word of purchase.—2 *Fonbl. Eq.* 69.

(2) The profits arising from lands or tenements, amerciaments, or fines.

(3) Event, consequence, evacuation, sending forth.

(4) The point in question, at the conclusion of the pleadings between contending parties in an action, when one side affirms, and the other denies. As to the former practice at Common Law, see 1 *Chit. Arch. Prac.*, 14th ed., 313; and as to the former issues from Chancery, see *Smi. Ch. Pr.*, 787.

It is provided by the present rules of pleading (R. S. C. 1883, Ord. XIX., r. 18, Ord. XXIII., r. 5, and Ord. XXVII., r. 13) that the plaintiff by his reply may join issue on the defence, that pleadings are to be deemed closed by joinder of issue, and that if no reply be delivered the pleadings are to be deemed closed within the time (21 days) limited, and 'all the material statements of fact' in the defence 'shall be deemed to have been denied and put in issue,' so that a formal joinder of issue is unnecessary. By Ord. XXXIII. a judge may direct preparation of issues, and settle them if the parties differ; but it is believed that this Order has seldom, if ever, been acted upon. See PLEADING.

Issue roll, to enter issues joined upon, abolished by rules in 4 Wm. IV.

Ita semper fiat relatio ut valeat dispositio. 6 Rep. 76.—(Let the interpretation be always such that the disposition may prevail.)

Ita utere tuo ut alienum non lædas. (Use your own property and your own rights in such a way that you will not hurt your neighbour, or prevent him from enjoying his.)

Item [Lat. *also*], a word used when any article is added to the former.

Iter, a footway; a right of passage.

Itinerant. See EYRE.

Iule [fr. *jol*, Got., a sumptuous treat], Christmas.—*Encyc. Lond.*

J.

J. A. Justice of Appeal, which see.

Jacens [*lying in abeyance*].

Jack-Ketch [supposed to be fr. *John Ketch*, a noted hangman in 1682, of whom his wife said that any bungler might put a man to death, but only her husband knew how to make a gentleman die sweetly], a vulgar name for a hangman.

Jacobus, a gold coin worth 24*s.*, so called from James I., who was king when it was struck.—*Encyc. Lond.*

Jactitation [fr. *jactito*, Lat., to boast], a false pretension to marriage.—*Canon Law.*

The suit of jactitation of marriage (*jactitationis matrimonii causâ*), which is not known to modern practice, may still be brought in the Divorce Court by the express terms of 20 & 21 Vict. c. 85, s. 6, when a person falsely boasts that he or she is married to another whereby a reputation of their marriage may ensue. The party injured sues for the purpose of having perpetual silence enjoined upon the unjustifiable boaster.

Jactivus, lost by default; tossed away.

Jactus, or **Jactura mercium** (*a throwing away of goods*), jetsam, which see.

Jaghire, Jaghur, Jagir (literally, the place of taking). An assignment to an individual of the government share of the produce of a portion of land. There were two species of *jaghires*; one, personal, for the use of the grantee; another, in trust for some public service, most commonly the maintenance of troops.—*Indian.*

Jail [fr. *geôle*, Fr.] a prison or gaol.

Jamaica Government Act, 29 & 30 Vict. c. 12. And see 32 & 33 Vict. c. 69; 25 & 26 Vict. c. 55; and 36 & 37 Vict. c. 6.

Jamma, Jumma, total amount, collection, assembly. The total of a territorial assignment.—*Indian.*

Jammabundy, Jummabundy, a written schedule of the whole of an assessment.—*Ibid.*

Jampnum, furze, or grass, or ground where furze grows; as distinguished from arable, pasture, or the like.—*Co. Litt.* 5 *a.*

Jaques, small money.—*Staund P. C.* c. xxx.

Javelin-men, yeomen retained by the sheriff to escort the judge of assize.

Jedburgh Justice. Lynch Law.

Jejunium, fasting.—*Jacob.*

Jeman, a yeoman.—*Cowel.*

Jeofail [corruption of *j'ai failli*, Fr., I have failed], an oversight in pleading or other law proceedings. After verdict the mistakes and omissions in pleadings, misjoining of issue, miscontinuance, misawarding of jury process, etc., were in certain circumstances rectified by various statutes called the Statutes of *Jeofails*. See AMENDMENT.

Jergeur or **Jerquer**, an officer of the custom-house, who superintends the waiters.—*Phillips.*

Jervis's Acts, 11 & 12 Vict. cc. 42, 43, 44, regulating (1) the commitment by justices of persons accused of indictable offences; (2) the summary conviction by justices of persons charged with trivial offences; and (3) the bringing of actions against justices, so called because they were prepared and passed through Parliament by Chief Justice Jervis, then Attorney-General, in 1848.

Jesse. A large brass candlestick, usually hung in the middle of a church or choir.—*Cowel.*

Jetsam, Jettison, or **Jetson** [fr. *jeter*, Fr.], goods or other things which having been cast overboard in a storm, or after shipwreck, are thrown upon the shore. See 16 & 17 Vict. c. 107, s. 76; and 17 & 18 Vict. c. 104, ss. 499, 500; and FLOTSAM.

Jeux de Bourse, speculating in the public funds, stock.—*French phrase.*

Jews. Several statutes have been passed during the present reign respecting the Jews. See 8 & 9 Vict. c. 52, giving them relief as to municipal offices; 9 & 10 Vict. c. 59, removing disabilities in regard to religious opinions; 10 & 11 Vict. c. 58, and 19 & 20 Vict. c. 119, ss. 21, 22, as to their marriages; 21 & 22 Vict. c. 48, s. 5, amended by 23 & 24 Vict. c. 63, as to their making declarations as a qualification for office; and 21 & 22 Vict. c. 49, empowering either House of Parliament by resolution to allow them to omit the words 'upon the true faith of a Christian' from the form of oath then required to be taken by members of Parliament. The 'Promissory Oaths Act, 1868' (31 & 32 Vict. c. 72), has since prescribed a form of oath containing no reference to the faith of a Christian, and the 'Promissory Oaths Act, 1871' (34 & 35 Vict. c. 48), repeals 21 & 22 Vict. c. 48, and 21 & 22 Vict. c. 49, except s. 4, which provides that the official patronage of a professing Jew shall devolve on the Archbishop of Canterbury. By s. 3 of 21 & 22 Vict. c. 49, nothing *in that act contained* was to extend to enable professing Jews to hold the office of Lord Chancellor.

Jobber, one who buys or sells for a speedy profit by re-sale or re-purchase, especially on the Stock Exchange.

Jocalia, jewels, paraphernalia.—*Cowel.*

Jocelet, a little manor or farm.—*Cowel.*

Jocus partitus, an election between two proposals.—*Bract.*, l. 4, tr. 1, c. 32.

John Doe, the name which was usually given to the fictitious lessee of the plaintiff in the mixed action of ejectment: he was sometimes called Goodtitle. See EJECTMENT. So the Romans had their fictitious personages in law proceedings, as *Titius, Seius.*—*Juv. Sat.* iv. 13.

Joinder of causes of action, coupling two or more matters in the same suit or proceeding.

Under the C. L. P. Act, 1852, s. 41, causes of action of whatever kind, provided they were by and against the same parties and in the same rights, might be joined in the same suit; but this did not extend to replevin or ejectment; and where two or more of the causes of action so joined were local, and arose in different counties, the venue might be laid in either of such counties, but the Court or a judge had power to prevent the trial of different causes of action together if such trial would be inexpedient, and in such case such Court or judge might order separate records to be made up, and separate trials to be had. The joinder in one bill in Equity of distinct and independent matters, which was termed multifariousness, was a ground of objection to the bill. See MULTIFARIOUSNESS.

By R. S. C. 1883, Ord. XVIII., the plaintiff may unite in the same action and the same statement of claim several causes of action, subject to various powers of the Court or a judge to order separate trials.

Joinder in pleading, accepting the issue and mode of trial tendered, either by demurrer, error, or issue in fact, by the opposite party. See now ISSUE.

Joinder of parties. See PARTIES.

Joint, combined; shared amongst many; in the same possession.

Joint fiat, a fiat which was issued against two or more trading partners. Abolished. See FIAT.

Joint-heir, a co-heir.

Joint-stock Banks, joint-stock companies for the purpose of banking. They are regulated, according to the date of their incorporation, by charter, or by 7 Geo. IV. c. 46; 7 & 8 Vict, cc. 32 and 113; 9 & 10 Vict. c. 45 (in Scotland and Ireland); 20 & 21 Vict. c. 49; and 27 & 28 Vict. c. 32; or by 'The Joint-stock Companies Act, 1862,' 25 & 26 Vict. c. 89, which latter Act makes registration under it compulsory in the case of a partnership consisting of more than ten persons. It is believed that the liability of the shareholders in chartered banks is in most if not in all cases limited to some amount fixed by the charter, generally twice the amount of their shares. Under the Companies Act, 1862, the liability may be either limited or unlimited, and most banks registered under that Act were unlimited until 1880, when many took advantage of the Companies Act, 1879, 42 & 43 Vict. c. 76, to register anew as limited. That Act, however, repealing and replacing s. 182 of the Companies Act, 1862, provides for unlimited liability in respect of bank-notes. The sale

and purchase of shares in joint-stock banking companies is regulated by 30 & 31 Vict. c. 29, which, in order to prevent speculative transactions, requires that the numbers of the shares shall be distinguished in the contract of sale, which is otherwise to be void; but it is believed that this enactment, which, although making it a misdemeanour to insert false numbers, imposes no penalty for not inserting the numbers at all, is not regarded (see LEEMAN'S ACT) on the Stock Exchange. See *Thring's Law of Joint-Stock Companies; Smith's Mercantile Law*; and JOINT-STOCK COMPANY.

Joint-stock Company, an association of a large number of persons united together for the common purpose of carrying on a trade, or some useful enterprise capable of yielding profit. The common property of the members, applicable to the purposes of the company, is called its joint-stock, and hence the name. The capital is generally divided into equal shares. Each member holds one or more, and in proportion to the number participates in the profits. The succession of members is kept up by transfer, or by transmission of the shares of deceased members. The management of the affairs of the company is vested in certain members called directors; and the general body of shareholders, beyond exercising a control over the acts of the directors upon special occasions, take no active part in the concerns of the company. Originally joint-stock companies were formed by an instrument called a *Deed of Settlement*, by which the constitution of the company and the conduct of its affairs were regulated. The Courts considered companies so formed as ordinary partnerships, and the rights and liabilities of the members *inter se*, and as towards the public, were determined upon the principles applicable to an ordinary partnership.

This doctrine led to inconvenience. Upon the rule that one partner cannot maintain an action against a co-partner, it was held that the directors could not sue the shareholders for calls; and upon the rule that a general account must be taken before one partner can be compelled to pay money to another, the whole of the affairs of the company had to be thrown into Chancery before a call could be recovered. Moreover, Courts of Equity declined to entertain suits for determining disputes between members unless the company consented to a dissolution, and this was rendered impracticable by the necessity of making all the members parties to it. Again, no action lay against a debtor of the company unless all the shareholders were plaintiffs. This led joint-stock companies in many cases to obtain a private Act of Parliament, or royal patent, giving them some of the privileges of corporations. Several attempts were made by the legislature to deal with the subject; see 16 Geo. IV. c. 91; 4 & 5 Wm. IV. c. 94; 1 Vict. c. 73; but these proving insufficient to meet the case, in 1844 was passed 'An Act for the Registration and Incorporation of Joint-stock Companies,' 7 & 8 Vict. c. 110, now repealed. This was followed by others amending it, and giving facilities for the winding-up of joint-stock companies (see 25 & 26 Vict. c. 89, Schedule III., pt. 1).

All prior Acts are repealed by 'The Companies Act, 1862' (25 & 26 Vict. c. 89), the statute by which (as amended by 30 & 31 Vict. c. 131 and other Acts) joint-stock companies are now regulated. The 4th section enacts that no company, association, or partnership, consisting of *more than ten persons*, shall thereafter be formed for the purpose of carrying on the business of *banking*, unless registered as a company under the Act, or formed in pursuance of some other Act, or of letters patent; and no company, association, or partnership, consisting of *more than twenty persons*, shall be formed for carrying on any business for the acquisition of gain, unless registered under the Act 'or formed in pursuance of some other Act, or of letters patent, or a company working mines within the Stannaries'; and the 6th section that *any seven* or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association, and complying with the requisitions for registration, form an incorporated company *with or without limited liability*.—Consult *Buckley*, *Palmer*, or *Thring*.

Joint Tenancy. This tenancy is created where the same interest in real or personal property is, by the act of the party, passed by the same matter of conveyance or claim *in solido*, and not as merchandise, or for purposes of speculation, to two or more persons in the same right, either simply, or by construction or operation of law jointly, with a *jus accrescendi*, that is, a gradual concentration of property from more to fewer, by the accession of the part of him or them that die to the survivors or survivor, till it passes to a single hand, and the joint-tenancy ceases.

This *jus accrescendi* holds place as well in equity as at law. Equitable estates, therefore, are subject to joint-tenancy, and its properties. The trust as well as the term passes to the survivor; and if the estate of two joint-tenants is assigned in trust for them, or such a trust is raised by implication, the equitable interest follows the nature of the former legal estate.

The courts of law and equity disfavour this mode of holding property *beneficially*.

During the feudal rigour, however, and when assurances were simple, joint-tenancy was found to be most useful. It was adopted to prevent dower and courtesy attaching. It avoided wardship, primer seisin, and other feudal imposts of the same description, for the title by the survivorship is paramount. A conveyance was made to the father and son, or to several co-trustees, of whom the interested owner was one, and a descent was thus avoided. By the Dower Act (3 & 4 Wm. IV. c. 105), no title of dower affects a joint estate, whether legal or equitable.

Anciently, joint-tenancy was favoured, because it did not induce fractions of estates.

And now, for the purpose of limitations over, it is much more accommodating than a tenancy in common, unless cross-remainders are expressed or implied. The law itself adopts it sometimes, as in the cases of executors, assignees in bankruptcy, and others, though they differ in some respects from simple joint-tenants.

There may be a joint-tenancy for life, or in fee, or in remainder, but not in tail, unless the donees, being male and female, may lawfully marry; for if not, the donees possess estates for life only, with several inheritances in tail. An estate cannot be granted to two or more jointly *and* severally, for severally is repugnant and they take as joint-tenants.

When an estate is granted to two or more persons without any modifying and disjunctive words, they take, according to the Common Law rule, as joint-tenants. For example, if an estate be granted to A. and B. for their lives, they become joint-tenants of the freehold; if to A. and B. and their heirs, they are then joint-tenants of the fee. While equity recognises this rule, yet it has laid down many exceptions to it, amongst the most important of which are the following:—

(1) If two join in lending money on mortgage, though they take a joint security, yet equity holds, that it could never have been intended that their interests should survive, the fair presumption being that each means to lend his own money, and to be repaid his own again. The consequence is, that on the death of one the survivor who holds the entire legal estate by survivorship, is deemed by equity a trustee for the personal representatives of the deceased co-mortgagee, until the money be repaid. Equity then treats the two mortgagees as tenants in common. Where a mortgage is made to trustees who did not appear in that character on the face of the deed (lest the title be incumbered with notice of their trust), it was usual to insert a clause, called a joint account clause, providing against the application of this rule of equity. See now section 61 of the Conveyancing Act, 1881.

(2) When two persons purchase an estate, and advance the purchase-money between them in *unequal* portions, equity treats them as tenants in common, notwithstanding the transfer be made to them generally, but the inequality must appear on the face of the conveyance. If, however, the consideration-money be paid by them in *equal* portions, and the transfer is general, then equity has not any ground to infer that this was not a joint purchase of the chance of survivorship, and they must be deemed, even in equity, as joint-tenants. Should one expend money in the repair and improvement of the estate, he will have a claim or lien on the estate for the amount of such money.

(3) When partners in trade purchase property for the partnership concern, equity treats them as tenants in common, holding the survivor to be trustee of the legal estate for the personal representatives of the deceased partner as to his share. Wares, merchandise, and stock in trade belonging to partners, survive to the representatives of the deceased partner. The *lex mercatoria* excludes the *jus accrescendi* for the benefit of commerce, which is *pro bono publico*, the maxim being *jus accrescendi inter mercatores locum non habet*.

A joint-tenancy, being created by the convention of parties, must arise out of the *same* deed, will, or claim, for there must exist a unity of *title* between them which must be by purchase, and not by mere operation of law, and the estate must vest in them at one and the same *time*; for a joint-tenancy must subsist *ab initio*; an estate cannot become a joint-tenancy by the happening of any circumstances *ex post facto*. The same *interest* must be given to the parties, for one joint-tenant cannot have one estate in the property as for life, and the other another as for years; and they must hold it by the same undivided possession, for each has an undivided moiety of the whole, and not the whole of an undivided moiety, though since the 3 & 4 Wm. IV. c. 27, s. 12, the possession of one joint tenant is no longer to be deemed the possession of the other or others.

Joint-tenants being seised *per my et per tout*, or, as Coke says, *totum conjunctim et nihil per se separatim*, enjoy a survivorship (*jus accrescendi*) which is held to be as good as a right by descent, the title of the survivor being paramount. It is a continuation of the estate by the survivorship of the tenants, the estate passing among the joint-owners without

any perceptible degree of transition but the diminution of the number of persons to enjoy it. The last survivor takes the whole, as if the estate had originally been given to him only, unless any of his companions have conveyed away his own share in his lifetime, which, of course, each can do; so a partial alienation is a severance *pro tanto*, for *alienatio rei præfertur juri accrescendi*.

The right of survivorship is necessarily reciprocal: for otherwise there would be different degrees of interest in the same estate, which is inconsistent with the nature of joint-tenancy. A body corporate, therefore, whose existence has no natural termination, cannot be joint-tenant with a natural person; and as survivorship is necessarily included in joint-tenancy, two corporations cannot be joint-tenants together; for both being considered by the law as of perpetual duration, it is impossible for one to survive the other.

If joint-tenants join in a conveyance, each transfers but his own part. The freehold in joint-tenants is so entire that they cannot grant, nor bargain and sell, nor surrender or devise to each other, much less exchange with or enfeoff one another. No right of dower or courtesy attaches to this estate, for the *jus accrescendi* is preferred to all charges and incumbrances which do not amount to at least a partial alienation of the share of a lease; and a devise by a joint-tenant, during the existence of the joint-tenancy, is void. The maxim is, *jus accrescendi præfertur ultimæ voluntati necnon oneribus*. By the Wills Act, a general devise passes after-acquired property; lands, acquired *jure accrescendi*, will consequently pass.

A curious question sometimes arises as to what is the law in case it cannot be proved which of two or more joint-tenants is the survivor. By the Roman law the relative strength of the parties, presumable from age and sex, was adopted as the criterion for asserting the priority of right. And the Code Napoleon has adopted the same principle. By our Courts, however, this rule is not considered applicable. See *Wing* v. *Angrave*, 8 *H. L. C.* 183.

In joint-tenancy all emblements go to the survivor. Judgment and crown-debts against a deceased joint-tenant do not affect the estate in the hands of the survivor; but if a joint-tenant alien so as to sever the jointure, or if he become the survivor or sole owner by release, prior judgments against him become available charges on the property.

The severance and destruction of this estate may be effected in several ways, as—

(1) By a voluntary deed of partition among the tenants agreeing to hold the property in severalty, for this is a disunion of their possession, and they have then but a separate interest in the several parts of the land, and the *jus accrescendi* is gone.

(2) By alienation without partition, as to one joint-tenant either releasing his share to the other, or conveying it away to a third person, for this is a destruction of the unity of title. A covenant to sell by a joint-tenant severs the estate in equity, provided it can be specifically performed, but not at law.

(3) By accession of interest, either by one joint-tenant purchasing the interest of the others, or by his acquiring the whole estate by survivorship, whereby the unity of interest is dissolved.

(4) By a decree in the Chancery Division of the High Court (see Jud. Act, 1873, s. 34 (3)). In an action brought by one joint-tenant, a commission issues to divide the land, and when this has been returned, the Court directs a compulsory partition, and orders the execution of reciprocal transfers. See PARTITION.

Jointress, or **Jointuress**, she who has an estate settled upon her by her husband, to hold during her life, at least provided she survive him.

Jointure, strictly, a joint estate limited to husband and wife; now understood to be a sole estate limited to the wife. To a legal jointure these five things are requisite:—

(1) The provision for the wife must take effect in possession or profit immediately after her husband's death. (2) It must be for her own life at least, and not *pour autre vie*, or for any term of years, or for any smaller estate. But the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure. (3) It must be made to herself, and no other, in trust for her. (4) It must be made in satisfaction of the whole, and not of part of her dower. (5) It must be either expressed or averred to be in satisfaction of dower. It may be made either before or after marriage; if made after marriage she may waive it, and claim her dower, unless it be provided by Act of Parliament.

The Statute of Jointures, 11 Hen. VII. c. 20, is repealed by 3 & 4 Wm. IV. c. 74, s. 17, except as to lands comprised in settlements made before the passing of this Act. See DOWER; and 20 Hen. VIII. c. 10.

Jokelet [fr. *yokelet*], a little farm such as requires a small yoke of oxen to till it.

Joncaria, or **Juncaria** [fr. *jonc*, Fr., a rush], land, where rushes grow.—*Co. Litt.* 5 *a*.

Journal, a day-book or diary of transactions used by merchants, mariners, tradesmen, etc., in their business.

Journals of Parliament, minutes of proceedings in Parliament which are matters *quasi* of record. As to proof of these, see 8 & 9 Vict. c. 113, s. 3; and *Tayl. on Evid.*, s. 1474.

Journey-hoppers, regrators of yarn.—8 *Hen. VI.* c. 5.

Journeyman [fr. *journée*, Fr., a day's work], a workman hired by the day, or other given time.

Journey's accounts, the shortest possible time between an abatement of one writ and the issuing of another. Obsolete.—6 *Rep.* 10.

Judaismus, the religion of the Jews; also usury; also the dwelling-places of the Jews.

Judex ad quem, a judge to whom an appeal is made.

Judex a quo, a judge from whom an appeal is made.

Judex damnatur cum nocens absolvitur. (The judge is condemned when a guilty person escapes punishment.)

Judex non potest esse testis in propriâ causâ. 4 Inst. 272.—(A judge cannot be a witness to his own cause.)

Judex non potest injuriam sibi datam punire. 12 Co. 113.—(A judge cannot punish an injury done to himself.)

Judge [fr. *juge*, Fr.; *judex*, Lat.], one invested with authority to determine any cause or question in a court of judicature.

To secure the dignity and political independence of the judges of the Supreme Court, it is enacted by s. 5 of the Jud. Act, 1875, repeating in effect 12 & 13 Wm. III. c. 2, and 1 Geo. III. c. 23, that the judges of the Supreme Court (with the exception of the Lord Chancellor, who goes out with the Ministry) shall hold their offices during good behaviour (prior to 12 & 13 Wm. III. c. 2, they held office during the pleasure of the Crown), subject to a power of removal by the Crown on an address by both Houses of Parliament. They may not sit in the House of Commons.

The County Court judges are appointed under s. 8 of the County Courts Act, 1888. As to their pensions see s. 24 of that Act. Their number is limited to 60, by s. 8.

No action lies against a judge for anything said or done in his judicial capacity; but if a judge act without jurisdiction, he may be made to answer for the consequences of his acts.—*Scott.* v. *Stansfield*, *L. R.* 3 *Ex.* 220. If a judge has a personal interest in the action, he is incapacitated from officiating, on the principle that *Nemo debet esse judex in propriâ suâ causâ.* See *Dimes* v. *Grand Junction Canal Co.*, 3 *H. L. Ca.* 759; but this incapacity, where it arises from an interest as one of several ratepayers only, is abolished by 40 Vict. c. 11.

Judge Advocate, Judge Advocate-General. All general military courts-martial are attended by either the judge advocate-general, an officer appointed by letters patent under the Great Seal; by a judge advocate appointed by commission under the sign manual; by a deputy judge advocate acting by deputation, either special or general, under the hand and seal of the judge advocate-general; or by a person appointed by general officers commanding the forces abroad, to execute the office of judge advocate. The duties of an officiating judge advocate at a court-martial are to provide accommodation for the Court, to administer the oaths to the members of the Court and to the witnesses, to summon the witnesses, to make a minute of the proceedings, and to advise the Court on points of law, of custom, and of form, and so far to assist the prisoner as to elicit a full statement of the facts material to the defence. The proceedings of general courts-martial held at home are transmitted by the officiating judge advocate to the judge advocate-general, to be laid before the Crown, with a statement, by the officiating judge advocate, of any circumstances which in his opinion may affect the legality of the decision. The proceedings of courts-martial held abroad are also transmitted to the judge advocate-general, and preserved in his office. See *Clode on Military Law.*

In the navy, when a court-martial has been ordered, the person nominated president appoints an officiating judge advocate, in the absence of a judge advocate or his deputy. His duties are nearly the same as those of the officiating judge advocate on military courts-martial. See *Thring's Criminal Law of the Navy*; and *Naval Regulations and Instructions*, chap. xi.; and see NAVAL DISCIPLINE ACT.

Judge Ordinary, the judge of the Court for Divorce.

Judger, a Cheshire juryman.—*Jacob.*

Judges' Chambers. See CHAMBERS, JUDGES'.

Judges' Salaries Act, 1872. 35 & 36 Vict. c. 51, by which the salary of a judge, formerly commencing from the day of his predecessor's death, is made to commence from the day of his appointment.

Judgment [fr. *jugement*, Fr.], judicial determination; decision of a Court.

Under the former practice of the Superior Courts, this term was usually applied only to the Common Law Courts, the term 'decree' being in general use in the Court of Chancery. The expression 'Judgment,' however, is now used generally, except in matrimonial causes, the term 'Judgment' including 'decree' (Jud. Act, 1873, s. 100).

The several species of judgments are either :—

(α) *Interlocutory*, given in the midst of a cause, upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the action. See INQUIRY, SUMMONSES, and ORDERS; and the various titles of the subjects of such judgment, as MANDAMUS, INJUNCTION, etc.

(β) *Final*, putting an end to the action by an award of redress to one party, or discharge of the other, as the case may be.

By the C. L. P. Act, 1852, s. 120, a plaintiff or defendant having obtained a verdict in a cause tried out of term, was entitled to issue execution in fourteen days, unless the judge who tried the cause, or some other judge, or the Court, ordered execution to issue earlier or later, with or without terms. And by r. 57, H. T. 1853, when a plaintiff or defendant obtained a verdict in term, or in case a plaintiff was non-suited at the trial in or out of term, judgment might be signed and execution issued thereon in fourteen days, unless the judge, etc., ordered execution earlier or later, etc. By r. 55, H. T. 1853, no rule for judgment was necessary; and after the return of a writ of inquiry, judgment might be signed four days after the return. See now EXECUTION. A party might be prevented from signing judgment by his opponent moving to set the verdict or non-suit aside, to enter a non-suit or in arrest of judgment. The unsuccessful party might also move for judgment *non obstante veredicto*; or for a repleader; or trial *de novo*.

All judgments, whether interlocutory or final, are entered of record of the day of the month and year when signed, and have no relation to any other day. But the Court or a judge may order judgment to be entered *nunc pro tunc*. As a general rule the practice, in regard to judgment under the Judicature Acts, is assimilated to that in use in the Court of Chancery where a decree was delivered on motion. It is provided by R. S. C. 1833, Ord. XL., r. 1, that the judgment of the Court shall be obtained on motion for judgment in ordinary cases.

The entry of judgment is provided for by Ord. XLI., which provides that every judgment shall be entered by the proper officer in the book to be kept for the purpose.

In the above rules as to motion for judgment mention is made of cases otherwise provided for; the principal cases so otherwise provided for are—

(1) *For default of Appearance*. See APPEARANCE.

(2) *For default of Pleading*. See PLEADING.

(3) *On Confession of Defence*. See that title.

(4) *On taking money out of Court*. See PAYMENT INTO COURT.

(5) *On non-appearance of the Plaintiff at the Trial*. In this case the defendant, if he has no counter-claim, is entitled to judgment dismissing the action (Ord. XXXVI., r. 32), but this may be set aside by the Court or a judge, upon such terms as may seem fit, upon an application made either at the assizes or in Middlesex within six days after trial (Ibid., r. 33).

(6) *By direction of the judge at the trial*. See Ord. XXXVI., r. 39.

As to judgments affecting lands, etc., see 1 & 2 Vict. c. 110, s. 13, and 27 & 28 Vict. c. 112. By s. 19 of 1 & 2 Vict. c. 110, judgments do not affect lands as to purchasers, mortgagees, or creditors, until they have been registered.

The 2 & 3 Vict. c. 11, after reciting that it is desirable that further protection shall be afforded to purchasers against judgments, crown-debts, and *lis pendens*, enacts 'that no judgment shall hereafter (June 4th, 1839) be docketed under 4 & 5 W. & M. c. 20, but that all such dockets shall be finally closed immediately after the passing of this Act, without prejudice to the operation of any judgment already docketed and entered under the said recited Act, except so far as any such judgment may be affected by the provisions hereinafter contained' (s. 1).

The 4th section makes judgments, though registered under 1 & 2 Vict c. 110, or 2 & 3 Vict. c. 11, void after five years from registration, as against purchasers, mortgagees, and creditors, unless a fresh registry be made within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so *toties quoties* at the expiration of every succeeding five years. The re-entry fee is one shilling. See 18 & 19 Vict. c. 15, ss. 5, 6, 13. (By 22 & 23 Vict. c. 35, s. 22, this provision as to registry is extended to Crown debts.)

As against purchasers, and mortgagees *without notice* of any such judgments, decrees, or orders, rules or orders as aforesaid, none of such judgments, decrees, or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the superior Courts aforesaid would have bound such purchaser or mortgagee before the 1 & 2 Vict. c. 110,

where it had been duly docketed according to the law then in force (2 & 3 Vict. c. 11, s. 8).

By 23 & 24 Vict. c. 38, writs of execution of judgments must be registered as therein mentioned. By 27 & 28 Vict. c. 112, no judgment, statute, or recognisance is to affect land until the land has been delivered in execution by writ of elegit or other lawful authority, and such writ registered as prescribed by the 23 & 24 Vict c. 38. The judgment-creditor is thereupon entitled to a summary order for sale from the Court of Chancery, and notice must be given to any other creditor whose judgment is a charge on the land.

In order to bind lands in Middlesex or Yorkshire, it is necessary to file a memorial of the judgment in the registry-office of such counties respectively: until this is done the lands will not be affected or bound by the judgment.

As to registering judgments of the Palatinate Courts to bind lands in the Counties Palatine, see 18 & 19 Vict. c. 15.

The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release (22 & 23 Vict. c. 35, s. 11).

As to the entry of satisfaction on Crown debts and on judgments, see 23 & 24 Vict. c. 115.

Where there are cross judgments in the same, or different actions in the same, or different Courts between parties substantially the same, the one may be set off against the other. This may be effected by applying to the Court or Division in which the opposite party has obtained judgment for a rule to show cause why satisfaction should not be entered on the roll, on the applicant's acknowledging satisfaction for the same amount in his judgment, or *vice versâ* if the applicant's judgment be less, the other party's solicitor having first satisfied his lien upon the judgment for costs in that particular case.

In an action against an executor or administrator, suggesting a *devastavit*, the judgment against the defendant shall be *de bonis propriis*, and so if he set up a defence which he knows to be false, and also if he be made liable and charged as assignee; but otherwise the judgment would be *de bonis testatoris*.—2 *Chit. Arch. Prac.*

As to the judgment in *replevin*. See REPLEVIN

Judgment in *scire facias* is the same as in ordinary cases. See REVIVOR.

In *criminal* cases, judgment, unless any matter be offered in arrest thereof, follows upon conviction, being the pronouncing of that punishment which is expressly ordained by law.—4 *Bl. Com.* c. xxiv.

Judgment-debtor. One against whom a judgment ordering him to pay a sum of money stands unsatisfied. He may, by order of the Court or a judge, be orally examined by the judgment creditors as to debts owing to him by third parties, and be compelled to produce books and documents, with a view to attaching any debts due to him (R. S. C. 1883, Ord. XLV., r. 1). See ATTACHMENT OF DEBTS.

Judgment-debtor Summons. The Bankruptcy Act, 1861, ss. 76—85, provided for the issue of this kind of summons by a judgment creditor in default of payment of whose debt the debtor might be adjudicated bankrupt. It was replaced in 1869 by the 'Debtor's Summons' under s. 7 of the Bankruptcy Act of 1869, which was itself replaced by the 'Bankruptcy Notice' under the Act of 1883. See DEBTOR'S SUMMONS.

Judgment summonses. As to commitment upon the same in the County Court, see COMMITMENT.

Judgments Extension Act, 1868. By this Act (31 & 32 Vict. c. 54) the judgments of the superior Courts of either England, Scotland, or Ireland may be enforced as judgments in either of the other two countries upon registration (in a prescribed manner) of certificates thereof in the country in which such judgments are sought to be enforced. The principle of this Act was in 1882 extended to Inferior Courts. See INFERIOR COURTS.

Judicandum est legibus non exemplis. 4 Co. 33.—(We are to judge by the laws, not by examples.)

Judicatores terrarum, persons in the county palatine of Chester, who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited 100*l.* to the Crown by custom.—*Jenk. Cent.* 71.

Judicature Acts, 1873, 1875, 36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77. See SUPREME COURT OF JUDICATURE.

Judices non tenentur exprimere causam sententiæ suæ. Jenk. Cent. 75.—(Judges are not bound to explain the reason of their sentence.)

Judices pedanei, judges chosen by the litigants. —*Civ. Law.*

Judicial Acts. Numerous statutes give summary power to justices of the peace, and declare that certain acts shall only be valid if done by two magistrates. If it be only a *ministerial* act, it is not requisite that the two

magistrates should be together at the time of doing the act; if it be *judicial*, they must.

Judicial Committee of the Privy Council, a tribunal of Privy Councillors, being also judges or retired judges, established by 2 & 3 Wm. IV. c. 92; 3 & 4 Wm. IV. c. 41; and 6 & 7 Vict. c. 38, for the disposal of appeals to the Sovereign in Council from Colonial and Ecclesiastical Courts, from the Court of Admiralty, and from certain orders in lunacy. By the Judicial Committee Act, 1871, 34 & 35 Vict. c. 91, provision was made for the appointment during two years of four additional and salaried members of the Judicial Committee, the other members of the tribunal, except tworetired Indian judges, receiving no salary as such. No one was qualified for appointment under that Act who was not, or had not been, a judge of the Superior Courts at Westminster, or a chief justice of the High Court in Calcutta, Madras, or Bombay; and the appointment of Sir R. Collier, the then Attorney-General, after gaining a technical qualification by sitting for a few days as a judge of the Court of Common Pleas, was generally considered to be contrary to the spirit of the Act.

The places of those four members of the Committee are filled up under the Appellate Jurisdiction Act, 1876, s. 14, by two 'Lords of Appeal in Ordinary,' who with the other Lords of Appeal in Ordinary sit both in the House of Lords and on the Judicial Committee, the policy of this legislation apparently being to consolidate the Judicial Committee with the final Court of Appeal as far as possible by ensuring that the acting members of each tribunal should be the same persons.

A portion of the jurisdiction of this Court, viz., in appeals from the Court of Admiralty or orders in lunacy, was taken away by the Judicature Act, 1873, s. 18, and given to the Court of Appeal. It is the practice of the Judicial Committee to hear only two counsel on each side.

Judicial discretion. Such matters in the course of a trial as are to be decided summarily by the judge, and cannot be questioned afterwards, are said to be within his jurisdiction. Various matters incidental to the conduct of a cause before trial are also by statute left in the discretion of the Court, or a judge at chambers. Discretion is thus defined by Coke, in *Rooke's Case*, 40 Eliz.: 'Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for, as one saith, *talis discretio discretionem conundit.*' Coke also quotes the maxim, *Discretio est scire per legem quid sit justum*, 10 Co. 140.

Judicial documents, proceedings relating to litigation. They are divided into: (1) judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, etc., which are incident to any judicial proceedings.—See 1 *Stark. Evid.* 252.

Judicial Oath, the oath to be taken 'as soon as may be after acceptance of office' by the Judges of the Supreme Court, and by justices of the peace for counties and boroughs. An affirmation may be substituted by every person for the time being by law permitted to make affirmation instead of oath. See Promissory Oaths Act, ss. 4, 11, 1868 (31 & 32 Vict. c. 72).

Judicial separation, grantable either to husband or wife on the ground of adultery, cruelty, or desertion without cause for two years and upwards.—20 & 21 *Vict.* c. 85, s. 16; also by justices, under 41 *Vict.* c. 19, to wife, on conviction of husband of aggravated assault.

Judicial writs, writs issuing from the court in which proceedings are commenced under its seal, and tested in the name of its chief judge, as distinguished from original writs, which issued out of the Court of Chancery.

Judicia posteriora sunt in lege fortiora. 8 Co. 97.—(The later decisions are the stronger in law.)

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur. 2 Inst. 537.—(Judgments are, as it were, the words of the law, and are received as truth.)

Judiciis posterioribus fides est adhibenda. 13 Co. 14.—(Credit is to be taken to the later decisions.)

Judicis est judicare secundum allegata et probata. Dyer, 12.—(It is the duty of a judge to decide according to facts alleged and proved.)

Judicis est jus dicere non dare. Lofft. 42. —(It is for the judge to administer, not to make laws.)

Judicium a non suo judice datum nullius est momenti. 10 Rep. 70.—(A judgment given by one who is not the proper judge is of no force.) See CORAM NON JUDICE.

Judicium Dei (*judgment of God*), a term applied by our ancestors to the now prohibited trials of secret crimes; as those by arms and single combat; or by ordeals, as by fire or red-hot ploughshares (see ORDEAL), which were founded on the belief that God would work a miracle rather than suffer innocence to perish.—*Encyc. Lond.*

Judicium redditur in invitum. Co. Litt. 248 *b.*—(Judgment is given against one, whether he will or not.)

Judicium semper pro veritate accipitur. 2 Inst. 380.—(Judgment is always taken for truth.) See RES JUDICATA.

Jugulator, a cut-throat or murderer.—*Cowel.*

Jugum terræ, a yoke of land, containing half a plough-land.—*Co. Litt.* 5 *a.*

Juncare, to strew rushes.—*Pat.* 14 *Edw. I.*

Juncaria. See JONCARIA.

Junta, or **Junto** [Lat.], a select council for taking cognizance of affairs of great consequence requiring secrecy; a cabal or faction.

Jura eodem modo destruuntur quo construuntur.—(Laws are abrogated by the same means as those by which they are made.)

Jura naturæ sunt immutabilia.—(The laws of nature are unchangeable.)

Jura personarum (*the rights of persons*).

Jura publica anteferenda privatis. Co. Litt. 130.—(Public rights are to be preferred to private.)

Jura publica ex privato promiscue decidi non debent. Co. Litt. 181 *b.*—(Public rights ought not to be promiscuously determined in analogy to a private right.)

Juramenta corporalia, corporal oaths.

Jurare est Deum in testem vocare, et est actus divini cultûs. 3 Inst. 165.—(To swear is to call God to witness, and is an act of religion.)

Jura regalia, royal rights; royal prerogatives. See 1 *Bl. Com.* 241 *et. seq.; Bac. Abr. Prerogative.* As to these rights in the county of Durham, see 21 & 22 Vict. c. 45.

Jura rerum (*the rights which a person may acquire in things*).

Jura sanguinis nullo jure civili dirimi possunt. D. 50, 17, 8; Bac. Max. reg. 11.—(The rights of blood cannot be destroyed by any civil right.)

Jura summa imperii (*the supreme rights of dominion*).

Jurat, the statement at the foot of an affidavit of the names of the parties swearing it, and of the officer before whom it is sworn, of the date, and of any other necessary particulars, as that the affidavit of a blind person was read in the presence of the officer to such person. See R. S. C. 1883, Ord. XXXVIII., Rules 9, 13, 14; and for the form in lieu of jurat where affirmation is made, see Oaths Act, 1888, s. 4.

Jurata, the jury-clause in a *Nisi Prius* record. The entry *jurata ponitur in respectu* is abolished. *C. L. P. Act,* 1852, s. 104.

Juration, the act of swearing; the administration of an oath.

Jurator, a juror.

Juratores sunt judices facti. Jenk. Cent. 61.—(Juries are the judges of fact.)

Juratory caution, in Scotch Law, a description of caution (security) sometimes offered in a suspension or advocation where the complainer is not in circumstances to offer any better.—*Bell's Dict.*

Jurats, officers in the nature of aldermen, sworn for the government of many corporations. The twelve assistants of the bailiff in Jersey are called jurats.

Jure divino (*by divine right*).

Jure emphyteutico (*by the law of rents and services*).

Jure naturæ æquum est neminem cum alterius detrimento et injuriâ fieri locupletiorem. D. 50, 17, 206.—(By the law of nature it is not just that any one should be enriched by the detriment or injury of another.)

Juridical, acting in the distribution of justice.

Juridical days, days in court on which the laws are administered.

Jurisconsulti, or **Jurisprudentes,** men who studied the forms and, in time, the principles of civil law, and expounded them for the benefit of their friends and dependants. See *Smith's Dict. of Antiq.*

Jurisdiction, legal authority; extent of power; declaration of the law. Jurisdiction may be limited either locally, as that of a County Court, or personally, as where a Court has a quorum, or as to amount, or as to the character of the questions to be determined.

Juris et de jure (*of law and from law*). A conclusive presumption, which cannot be rebutted, is called a presumption *juris et de jure.*

Jurisinceptor, a student of the civil law.

Jurisprudence, the science of law, especially of Roman law.

Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia. Just. Inst., 1, 1, 1.—(Jurisprudence is the knowledge of things divine and human; the science of the right and the wrong.)—*Sand. Just.,* 7th ed., 5.

Jurist, a civil lawyer, a civilian.

Juris utrum, an abolished writ which lay for the parson of a church whose predecessor had alienated the lands and tenements thereof.—*F. N. B.* 48.

Jurnedum, a day's travelling.

Juror, one who serves on a jury.

Jurors' Book, a list of persons qualified to serve on juries.

Jury [fr. *jurata,* Lat.; *juré,* Fr.], a company of men sworn to deliver a verdict upon evidence delivered to them touching the issue.

Trial by jury may be traced to the earliest Anglo-Saxon times. One of the judicial customs of the Saxons was, that a man might be cleared of an accusation of certain crimes, if an appointed number of persons (*juratores*, or more properly *compurgatores*) came forward and swore to a *veredictum*, that they believed him innocent. It is remarkable that for accusations of any consequence among the Saxons on the Continent, twelve *juratores* was the number required for an acquittal. Similar customs may be observed in the laws of Athens and Rome, where δικασται and *judices* answer to jurors, and of the continental Angli and Frisiones, though the number of jurors varied.

See as to the introduction and growth of trial by jury in England *Forsyth's History of Trial by Jury*.

The property qualification of jurors is fixed by 6 Geo. IV. c. 50, s. 1, for common jurors, at 10*l.* a year freehold, or 20*l.* a year leasehold, or assessment to the poor-rate or house-duty for a house of 30*l.* a year in Middlesex and 20*l.* a year in other counties; the qualification for a special juror, by s. 31 of the same Act, and the Jurors' Act, 1870, 33 & 34 Vict. c. 77, s. 6, is having these property qualifications and being also legally entitled to be called an esquire, or being a person of higher degree, or being a banker or merchant, or occupying a house of a certain ratable value.

By the Act of 1870 also, aliens domiciled here for ten years or upwards may be jurors if otherwise qualified (s. 8); and convicts (unless after pardon) are disqualified (s. 10). For the various classes of persons exempted from serving on juries see the comprehensive schedule to the Act, which includes peers, members of parliament; judges; clergymen, and other ministers of religion; serjeants, barristers at law, certificated conveyancers and special pleaders, if actually practising; solicitors, if actually practising and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice; officers of courts of law and equity; and very many others (see the schedule).

There is no statutory remuneration for common jurors; s. 22 of the Act of 1870, which fixed a remuneration of ten shillings a day for common jurors, and a guinea a day for special jurors, was repealed by 34 Vict. c. 2. Special jurors get a guinea a cause by s. 34 of 6 Geo. IV. c. 50.

A coroner's jury and grand jury may consist of any number more than eleven. Generally they consist of twenty-three. Juries in all criminal trials and civil trials in the superior courts, and in writs of inquiry, consist of twelve men, neither more nor less. Juries in County Courts consist of five. Unanimity is not required from a grand jury or a coroner's jury: the verdict of twelve men, which is in fact the jury of a majority, is sufficient.

By the 33 & 34 Vict. c. 14 (Naturalisation Act), s. 5, an alien is no longer entitled to be tried by a jury *de medietate linguæ*. See GRAND JURY, SPECIAL JURY, and *Chitty's Statutes*, vol. iii. tit. '*Juries*.'

Jury process, the writ for the summoning of a jury. They were the *distringas juratores*, or *habeas corpora juratorum*, and the *venire juratores facias*, now abolished. A jury is summoned by precept. See 23 & 24 Vict. c. 77.

Jury-woman, or **Jury of Matrons**. Women are impannelled as a jury in two cases only: (1) upon a writ *de ventre inspiciendo*, which see; (2) where a female prisoner is condemned to be executed, and pleads pregnancy as a ground to postpone the completion of the sentence until after her confinement. Upon this a jury of matrons, or discreet women, inquire into the plea; should they bring in their verdict that the prisoner is *enceinte*, the execution is stayed until the birth of the child, after which, as a general rule, the Crown commutes the punishment.

Jus, law, right, equity, authority, and rule.

A Roman 'magistratus' generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a judex for that purpose, and gave him instructions. Accordingly, the whole procedure was expressed by the two phrases *Jus* and *Judicium*; of which the former comprehended all that took place before the magistratus (*in jure*), and the latter all that took place before the judex (*in judicio*). Originally, even the magistratus was called judex, as, for instance, the consul and prætor (*Liv.* iii. 55); and under the empire the term judex often designated the præses.—*Smith's Dict. of Antiq.*

All law (*jus*) is distributed into two parts, —*Jus Gentium* and *Jus Civile*,—and the whole body of law peculiar to any state is its *Jus Civile* (*Cic. de Orat.* i. 44). The Roman law, therefore, which is peculiar to the Roman state is its Jus Civile, sometimes called Jus Civile Romanorum, but more frequently designated by the term Jus Civile only, by which is meant the Jus Civile of the Romans.

The Jus Gentium is viewed by Gaius as springing out of the *Naturalis Ratio*, common to all mankind, which is still more clearly expressed in another passage (i. 89), where he uses the expression '*omnium civitatum*

jus.' as equivalent to the Jus Gentium, and as founded on the Naturalis Ratio.

The Naturale Jus and the Jus Gentium are therefore identical. Cicero (*Off.* iii. 5) opposes Natura to Leges, where he explains Natura by the term Jus Gentium, and makes Leges equivalent to Jus Civile.

In the partitiones (c. 37), he also divides Jus into Natura and Lex.

There is a threefold division of Jus made by Ulpian and others, which is as follows:—Jus Civile; Jus Gentium, or that which is common to all mankind; and Jus Naturale, which is common to man and beasts. The foundation of this division seems to have been a theory of the progress of mankind from what is commonly termed a state of nature; first, to a state of society, and then to a condition of independent states. This division had, however, no practical application, and must be viewed merely as a curious theory.

The Jus Civile of the Romans is divided into two parts—Jus Civile in the narrower sense; and Jus Pontificium, or the law of religion. This opposition is sometimes expressed by the words *Jus* and *Fas* (*fas et jura sinunt.—Virg. Georg.* i. 269); and the law of things not pertaining to religion, and of things pertaining to it, are also respectively opposed to one another by the terms *Res Juris Humani et Divini* (*Instit.* ii. tit. 1).

The terms *Jus Scriptum* and *Non Scriptum*, as explained in the Institutes (i. tit. 2), comprehended the whole of the Jus Civile; for it was all either Scriptum or Non Scriptum, whatever other divisions there might be (*Ulp. Dig.* 1. tit. 1, s. 6). *Jus Scriptum* comprehended everything, except that '*quod usus approbavit.*' This division of Jus Scriptum and Non Scriptum does not appear in Gaius. It was borrowed from the Greek writers, and seems to have little or no practical application among the Romans.

There is another division of the matter of law which appears among the Roman jurists, viz., the Law of Persons, the Law of Things, which is expressed by the phrase '*jus quod ad res pertinet*'; and the Law of Actions, '*jus quod ad actiones pertinet*' (*Gaius*, i. 8).—*Smith's Dict. of Antiq.*

Jus Accrescendi (*the right of survivorship*). See JOINT TENANCY.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii. Co. Litt. 182.—(The right of survivorship does not exist among merchants, for the benefit of commerce.)

Jus accrescendi præfertur oneribus. Co. Litt. 185.—(The right of survivorship is preferred to incumbrances.)

Jus accrescendi præfertur ultimæ voluntati. Co. Litt. 185 b.—(The right of survivorship is preferred to the last will.)

Jus ad rem, an inchoate and imperfect right; such as a parson promoted to a living acquires by nomination and institution.

Jus æsnecise, the right of primogeniture.

Jus albinatus, the *droit d'aubaine*, which see.

Jus Anglorum, the laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred before all others.

Jus Civile, the interpretation of the laws of the Twelve Tables, and now of the whole system of the Roman laws.

Jus Civitatus, the freedom of the city of Rome. It differs from *Jus Quiritium*, which comprehended all the privileges of a free native of Rome. The difference is much the same as between denization and naturalisation with us.

Jus Commune, the common law.

Jus constitui oportet in his quæ ut plurimum accidunt non quæ ex inopinato. D. 1, 3, 3.—(Law ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence.)

Jus Coronæ, the right of the Crown.

Jus curialitatis Angliæ, the courtesy of England, which see.

Jus deliberandi, the right which an heir has in Scotch law, of deliberating for a certain time whether he will represent his predecessor. See ANNUS DELIBERANDI.

Jus devolutum, the right of the Church of presenting a minister to a vacant parish, in case the patron shall neglect to exercise his right within the time limited by law.

Jus disponendi, the right of disposition; the right of disposition by will: the right to call upon a trustee to execute conveyances of the legal estate, as the *cestui que trust* directs.

Jus dividendi [Med. Lat.], the right of disposing of realty by will.—*Du C.*

Jus duplicatum, the right of possession as well as the right of property of a thing.

Jus ex injuriâ non oritur.—(A right cannot arise to any one out of his own wrong.)

Jus feciale, the law of nations.—*Roman Law.*

Jus fiduciarium, a trust.

Jus fodiendi, a right of digging.

Jus gentium, the law of nations.

Jus gladii, the right of the sword; the power of life and death.

Jus habendi the right to be put in actual possession of property.

Jus habendi et retinendi, a right to have and to retain the profits, tithes, and offerings, etc., of a rectory or parsonage.

Jus hæreditatis, the right of inheritance. See DESCENT.

Jus honorarium, the body of Roman law, which was made up of edicts of the supreme magistrate, particularly the prætors.

Jus imaginis, the right of using pictures and statues of ancestors among the Romans. It had some resemblance to the right of bearing a coat of arms amongst us.

Jus in personam, a right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something.

Jus in re, a complete and full right; a real right, or a right to have a thing, to the exclusion of all other men.

Jus jurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur. Grotius, l. 2, c. xiii. s. 10.—(The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked.) See OATH.

Jus liberorum, a privilege granted to such persons in ancient Rome as had three children, by which they were exempted from all troublesome offices.

Jus mariti, the right to his wife's movable estate which a husband acquired, by virtue of the m riage, before the Married Women's Property Act, 1882.

Jus merum, pure or mere right.

Jus naturale est quod apud omnes homines eandem habet potentiam. 7 Co. 12.—(Natural right is that which has the same force among all men.)

Jus non patitur ut idem bis solvatur. (Law does not suffer that the same thing be twice paid.)

Jus Papirianum, the laws of Romulus, Numa, and other kings of Rome, collected by Sextus Papirius, who lived in the time of Tarquin the Proud.

Jus pascendi, the right of grazing.

Jus patronatus, a commission granted by a bishop to some persons, usually his Chancellor and others, of competent learning, to inquire who is the rightful patron of a church.

Jus possessionis, a right of possession.

Jus postliminii. See POSTLIMINIUM.

Jus prætorium, the discretion of the prætor in Roman law, as distinguished from the *leges* or standing law.—See CIVIL LAW.

Jus precarium, a precarious or courteous right for which the remedy was only by entreaty or request.

Jus presentationis, a right of presenting.

Jus privatum, the civil or municipal law of Rome.

Jus publicum et privatum quod ex naturalibus præceptis aut gentium aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Anglicæ rectum esse dicitur. Co. Litt. 1858.—(Public and private law is that which is collected from natural principles, either of nations or in states; and that which in written law is called *jus*, in the law of England is said to be right.)

Jus publicum privatorum pactis mutari non potest.—(A public right cannot be altered by the agreements of private persons.)

Jus recuperandi, intrandi, etc., a right of recovering and entering land, etc.

Jus relictæ, the right of a widow in her deceased husband's personalty; if there be children, she is entitled to a third of it; if there be none, to a half.

Jus respicit æquitatem. Co. Litt. 24.—(Law has regard to equity.)

Jus superveniens auctori accrescit successori.—(A right growing to a possessor accrues to the successor.)

Jus tertii, the right of a third person, e.g., to attach money belonging to his debtor, etc., in the hands of another person. In Scotch law when a party in an action maintains a plea which he has neither title nor interest to maintain, he may be met by the plea that it is *jus tertii* in him to maintain such a plea.—*Bell's Scotch Law Dict.*

Jus testamentorum pertinet ordinario. 4 H. 7, 13 b.—(The right of testaments belongs to the ordinary.) See now PROBATE.

Jus triplex est; proprietatis, possessionis, et possibilitatis.—(Right is threefold; of property, of possession, and of possibility.)

Jus venandi et piscandi (*the right of hunting and fishing*).

Jus vendit quod usus approbavit. Ellesm. Postn. 35.—(The law dispenses what use has approved.)

Justa, a certain measure of liquor, being as much as was sufficient to drink at once.—*Mon. Angl.* t. 1, 149.

Justice [fr. *justitia*, Lat.], the virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive*, belonging to magistrates, or *commutative*, respecting common transactions among men.

Justice, High Court of. See HIGH COURT OF JUSTICE.

Justicements, all things appertaining to justice.

Justicer, administrator of justice.

Justices, officers deputed by the Crown to administer justice and do right by way of judgment. The judges of the supreme court are called justices, but the word is usually applied to petty magistrates who sit to ad-

minister summary justice in minor matters, and who are commonly called *justices of the peace*. They were first appointed in 1327 by 1 Ed. III. st. 2, c. 16, and are now appointed by the Queen's special commission under the Great Seal, the form of which was settled by all the judges in 1590, and continues, with little alteration, to this day. This appoints them all, jointly and severally, to keep the peace in the county named; and any two or more of them to inquire of and determine felonies and other misdemeanours in such county committed, in which number some particular justices, or one of them, are directed to be always included, and no business done without their presence, the words of the commission running thus:—*Quorum aliquem vestrum*, A., B., C., D., etc., *unum esse volumus*, whence the justices so named were usually called justices of the *quorum*; but the modern practice is to include all the justices in the quorum clause (*Stone's Justice*, 8th ed., by *Pritchard*, p. 4). A justice named in the Commission is not at liberty to act until he has taken the oath of qualification as to sufficiency of estates, and also the Oath of Allegiance and Judicial Oath in the form respectively prescribed by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 82), and the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), s. 2. These justices ('stipendiary magistrates' excepted) act gratuitously, receiving neither salary nor fees.

By 18 Geo. II. c. 20, every justice *for a county* must have an estate of freehold, copyhold, or customary tenure, in fee, for life, or a given term, of the yearly value of 100*l.*, or a reversion or remainder expectant upon such lease as in the Act mentioned, with reserved rents of the clear yearly value of 300*l.* per annum; but two years' occupation of a dwelling house of not less than 100*l.* annual value will of itself give a qualification by 38 & 39 Vict. c. 54. By 6 & 7 Vict. c. 73, s. 33, no practising attorney or solicitor was capable of being a county justice; but this disqualification was removed by 34 Vict. c. 18 so far as regards a county where the business is not carried on.

Borough Justices (in addition to the mayor and ex-mayor, who are judges *ex officio* in every borough) are appointed by the Crown in boroughs having a separate commission of the peace. They must reside, while acting, in or within seven miles of the borough, or occupy property therein, but they need not be burgesses or have such qualification by estate as is required for a justice of the county.—*Mun. Corp. Act*, 1882, ss. 155—7.

The office subsists during the pleasure of the Crown, and is determinable (1) by demise of the Crown; (2) by express writ under the Great Seal; (3) by writ of *supersedeas*; (4) by a new commission; (5) by accession to the office of sheriff, during the year of the shrievalty.

The duties of a justice of the peace are of a most varied and onerous character. They are of four principal kinds: (1) To commit offenders to trial before a judge and jury, upon being satisfied that there is a *primâ-facie* case against them. This power is chiefly regulated by 'Jervis' Act' (No. 1), 11 & 12 Vict. c. 42. (2) To convict and punish summarily. This *procedure* is chiefly regulated by 'Jervis' Act' (No. 2), 11 & 12 Vict. c. 43, and the Summary Jurisdiction Act, 1879, while the *power* itself is given by the particular statute dealing with the subject-matter of the offence. (3) To act, *if County Justices*, as Judges at Quarter Sessions, where their chairman presides and tries indictments with a jury, and such justices as attend the Quarter Sessions sit as a Court of Appeal from the decisions of justices in petty sessions. (4) The licensing of places for the sale of intoxicating liquor, and of persons to deal in game.

The management of such administrative business as the licensing of theatres, the levying of county rates, the establishment and maintenance of reformatory and industrial schools, etc., is transferred from the justices to county councils (see that title) by s. 3 of the Local Government Act, 1888.

Consult *Burn's Justice; Stone's Petty Sessions Practice*; *Leeming and Cross's Quarter Sessions Practice*, and *Pritchard's Quarter Sessions*, and see *Chitty's Statutes*, vol. iii. tit. '*Justices*.'

Justices of Appeal, the title borne by the ordinary judges of the Court of Appeal, under Jud. Act, 1875, s. 4, until the Jud. Act, 1877, 40 Vict. c. 9, by s. 4, gave them the style of 'Lords Justices of Appeal.'

Justices, Lords, of Appeal. See LORDS JUSTICES.

Justice-seat, the principal court of the forest.

Justiceship, rank or office of a justice.

Justiciable, proper to be examined in courts of justice.

Justiciar, an officer instituted by William the Conqueror; a lord chief justice.

Justiciar or **Justiciary, Chief**, an office of high importance in our early history. He presided in the King's Court and in the Exchequer, and his authority extended over all other courts. He was *ex-officio* regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The

last who filled the office and bore the title of *Capitalis Justitiarius Angliæ* was Philip Basset, temp. Hen. III.

Justiciary, High Court of, the supreme criminal court of Scotland, composed of five of the lords of session, together with the lord justice-general and justice-clerk; of whom the lord justice-general, and in his absence the lord justice-clerk, is president. Its jurisdiction extends to the whole of Scotland. It has also the power of revising the sentences of all the Scottish inferior criminal courts, and from it there is no appeal.

Justiciatus, judicature; prerogative.

Justicies, a writ directed to the sheriff in some special cases, by virtue of which he might hold plea of debt in his County Court for a large sum; whereas, by his ordinary power, he was limited to sums under 40*s*.—*F. N. B.* 117; 3 *Bl. Com.* 36.

As the sheriff could not, by this process, or the judgment to be obtained thereupon, arrest the defendant's body, but only take his goods; and as the cause might be removed at the defendant's pleasure into the superior courts, this process fell into desuetude.

Justifiable homicide, the killing of a human creature without incurring any legal guilt. It is of various kinds:—

(1) The due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country.

(2) It may be committed for the advancement of public justice, as in the following instances: (α) Where an officer or his assistant, in the due execution of his office, either in a criminal or civil case, arrests, or attempts to arrest, a person who resists and who is killed in the struggle. (β) In case of a riot or rebellious assembly, officers endeavouring to disperse the mob are justified in killing them, both at Common Law and by the Riot Act, 1 Geo. I. c. 5. (γ) Where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them, it is justifiable, for the sake of preventing an escape. (δ) Where an officer or his assistant, in the due execution of his office, arrests, or attempts to arrest, a person for felony or a dangerous wound given, and he having notice thereof flies and is killed by such officer or assistant in pursuit. (ε) Where, upon such offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance, or flight, under similar circumstances.

(3) Where committed for the prevention of any forcible or atrocious crime, but not if the crime is unaccompanied by force.

If two shipwrecked persons get on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, this is said by Lord Bacon and others to be justifiable, but such is not the law of England. See *Reg.* v. *Dudley*, 12 *Q. B. D.* 273, in which, where a shipwrecked crew was dying of famine, it was held, upon a special verdict, not to be justifiable homicide but wilful murder for two of them to kill a boy to feed upon his body. The prisoners in this case were sentenced to death, but the sentence was commuted to six months' imprisonment.

Justification, a maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer, particularly in an action of libel; a defence of justification is a defence showing the libel to be true, or in an action of assault showing the violence to have been necessary.

Justificators, a kind of compurgators, or those who by oath justified the innocence or oaths of others, as in the case of WAGER OF LAW.

Justifying bail, proving the sufficiency of bail or sureties in point of property, etc. See BAIL.

Justifying security. Administrators in certain cases are required by the Court of Probate to give justifying security, i.e., the sureties to the administration bond must, in an affidavit, swear that they are, after the payment of their debts, worth a sum specified. Justifying security is required by the Court according to the circumstances of each case, subject to the rule that whenever administration is granted in default of the appearance of persons cited, but not personally served with the citation, or for the use and benefit of a person of unsound mind, unless it is granted to a committee appointed by the Court of Chancery, justifying security must be given.—1 *Williams on Executors.*

Justinianist, a civilian; one who studies the civil law.

Justitia, a statute law, or ordinance. Also a jurisdiction, or the office of a judge.

Justitia debet esse LIBERA, *quia nihil iniquius venali justitiâ;* PLENA, *quia justitia non debet claudicare; et* CELERIS, *quia dilatio est quædam negatio.* 2 Inst. 56.—(Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt; and quick, for delay is a kind of denial.)

Justitia est duplex, viz.: severè puniens et verè præveniens. 3 Inst. Epil.—(Justice is double; punishing severely, and truly preventing.)

Justitia non est neganda, non differenda. Jenk. Cent. 93. — (Justice is neither to be denied nor delayed.) See MAGNA CHARTA.

Justitia piepoudrous, speedy justice.—*Bract.*, 333 *b*.

Justitium, a ceasing from the prosecution of law, and exercising justice in places judicial.—*Cowel.*

Justitium facere, to hold a plea of anything.

Justs or **Jousts**, exercises between martial men and persons of honour; with spears, on horseback; different from *tournaments*, which were military exercises between many men in troops.—24 *Hen. VIII.* c. 13.

Juvenile offenders, summary trial and punishment of. See ss. 10 & 11 of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 45, which repeals and replaces 10 & 11 Vict. c. 82, and other enactments, and allows children under 12 and 'young persons' under 14 to be summarily tried for certain indictable offences, instead of being committed for trial by jury. See also INDUSTRIAL SCHOOLS, and REFORMATORY SCHOOLS.

Juverna, an ancient name of Ireland.

Juxta formam statuti (*according to the form of the statute*).

K.

Kabani, a person who, in oriental states, supplies the place of our notary public. All obligations, to be valid, are drawn by him; and he is also the public weigh-master: and everything of consequence ought to be weighed before him.—*Encyc. Lond.*

Kabooleat, properly *Kabuliyat*, 'a written agreement, especially one signifying assent, as the counterpart of a revenue lease, or the document in which a payer of revenue, whether to the Government, the Zemindar, or the farmer, expresses his consent to pay the amount assessed upon his land' (*Wilson's Indian Glossary*).—*Indian.*

Kaia, a key, quay, or wharf.—*Old Records.*

Kaiage or **Kaiagium**, a wharfage-due.

Kain, poultry, etc., renderable by a vassal to his superior.—*Bell's Scotch Law Dict.*

Kalalconna, a duty paid by shopkeepers in Hindostan, who retail spirituous liquors; also the place where spirituous liquors are sold.—*Indian.*

Kalendæ, rural chapters, or conventions of the rural dean or parochial clergy, which were formerly held on the calends of every month; hence the name.—*Paroch. Antiq.* 604.

Kalendar [now spelled calendar], an account of time.

Kalends. See CALENDS.

Kantref [Brit.], the division of a county; a hundred in Wales. See CANTRED.

Karitè, the best beer in a religious house. See CARITAS.

Karle, a churl.—*Domesday.*

Karrata fœni (*a cart-load of hay*).

Kay, a quay, or key.

Kazy, a Mahometan judge or magistrate in the East Indies, appointed originally by the court at Delhi, to administer justice according to their written law; under the British authorities their judicial functions ceased, and their duties were confined to the preparation and attestation of deeds, and the superintendence and legalisation of marriage and other ceremonies among the Mahometans.—*Indian.*

Keating's (Sir H. S.) Act (for summary procedure on bills of exchange), 18 & 19 Vict. c. 67. The practice under this Act was continued under the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 4 (d.) (Jud. Act, 1875, Ord. II., r. 6), but abolished by the Rules of April 1880.

Kebbar or **Culler**, the refuse sheep drawn out of a flock.—*Cooper's Thesaur.*

Keelage, a privilege to demand money for the bottom of ships resting in a port or harbour.—*Termes de la Ley.*

Keelhale, Keelhaul, or **Keelrake**, to drag a person under the keel of a ship by means of ropes from the yardarms—a punishment formerly practised in the navy.—*Encyc. Lond.*

Keels, vessels for the carriage of coals.—*Jac.*

Keeper of the Great Seal, Lord, a judicial officer who used to be appointed in lieu of the Lord Chancellor.—5 *Eliz.* c. 18.

Keeper of the Privy Seal, now called the Lord Privy Seal, through whose hands all charters, etc., pass, before they come to the Great Seal. The office of Lord Privy Seal is always held by a Cabinet Minister.

Keeper of the Queen's Prison. This officer is appointed by the Secretary of State for the Home Department during pleasure.—5 & 6 *Vict.* c. 22, s. 22; 11 & 12 *Vict.* c. 7, s. 4; and 23 & 24 *Vict.* c. 60.

Keeper of the Touch, the Master of the Assay in the Mint.—12 *H.* 6, c. 14.

Keepers of the Liberty of England. See CUSTODES LIBERTATIS, etc.

Keeping house, confining oneself within the privacy of home to defeat creditors; an act of bankruptcy.—*Judicature Acts.*

Keeping the peace, Security for. A recognisance or obligation to the Crown, taken in some court, or by some judicial officer, whereby a person acknowledges himself to be indebted to the Crown in a certain sum, with condition to be void if he shall appear

in court on such a day, and in the meantime shall keep the peace either generally towards the sovereign and all her liege people, or particularly towards the person who craves the security; or with condition so to keep the peace for a certain period, not dependent on any appearance in court.

Kennelworth edict (*dictum sive edictum de Kennelworth*). An edict or award between Henry III. and those who had been in arms against him; so called because made at Kenelworth Castle in Warwickshire, anno 51 Hen. III. A.D. 1266. It contained a composition of those who had forfeited their estates in that rebellion, which composition was five years' rent of the estates forfeited. —*Hale's Hist.* p. 10, n. (*d*).

Kennington Park. See 15 & 16 Vict. c. 29, and PARK.

Kentlage, a permanent ballast, consisting usually of pigs of iron, cast in a particular form, or other weighty material, which, on account of its superior cleanliness, and the small space occupied by it, is frequently preferred to ordinary ballast.—*Abbott on Shipping*, 5.

Kerhere, a customary cart-way; also, a commutation for a customary carriage-duty. —*Cowel.*

Kernellatus, fortified or embattled.—*Co. Litt.* 5 *a.*

Kernes, idlers, vagabonds.

Keyus, a guardian, warden, or keeper.—*Mon. Angl.*, tom. 2, p. 71.

Khalsa, pure, unmixed. An office of government in which the business of the revenue department was transacted under the Mahometan Government, and during the early period of British rule. Khalsa lands are lands the revenue of which is paid into the Exchequer.—*Indian.*

Khiraj, tax, tribute, land-tax.— *Ibid.*

Kidder, an engrosser of corn to enhance its price.—*Ainsworth.*

Kiddle, Kidel, or **Kedel** [fr. *kidellus*, Lat.], a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish.—2 *Inst.* 38, and see, *per* Lord Selborne, C., *Mill* v. *Duke of Devonshire*, 8 *App. Cas.*, at p. 144.

Kidnapping [fr. *kind*, Dut., a child, and *nap*, to steal], the forcible abduction or stealing away of a man, woman, or child from their own country, and sending them into another. It is an offence punishable at the Common Law by fine and imprisonment.—4 *Bl. Com.* 219; and the kidnapping a child under 14 is made felony by 24 & 25 Vict. c. 100, s. 56.

See also Kidnapping Act, 1872, 35 & 36 Vict. c. 19, for the prevention and punishment of criminal outrages upon natives of the islands in the Pacific Ocean.

Kilderkin, a measure of 18 gallons.

Kilketh, an ancient servile payment made by tenants in husbandry.—*Cowel.*

Kill, Irish for a church or cemetery; used as a prefix to the names of many places in Ireland.

Killagium, keelage, which see.

Killyth-stallion, a custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares.—*Spelm.*

Kin or **Kindred** [fr. *cynren*, Sax.], relation by blood.

There are two degrees of either kindred; the one in the lineal or direct line ascending or descending, and the other in the collateral or indirect line.

The right of representation of kindred for the purposes of distribution of personalty, in the descending line, reaches beyond the great grand-children of the same parents; but in the collateral line it is not allowed to reach beyond brothers' and sisters' children.

Kin-bote, compensation for the murder of a kinsman.—*Old Saxon Law.*

Kindred, relations by blood. See KIN.

King. See QUEEN.

King-craft, the art of governing.

King-geld, a royal aid; an escuage.

Kings-at-Arms. The principal herald of England was of old designated king of the heralds, a title which seems to have been exchanged for king-at-arms about the reign of Henry IV. The kings-at-arms at present existing in England are three: Garter, Clarencieux, and Norroy, besides Bath, who is not a member of the college. Scotland is placed under an officer called Lyon King-at-Arms, and Ireland is the province of one named Ulster.

King's Bench. See QUEEN'S BENCH.

King's Bench Prison, now called the Queen's Prison.—5 & 6 *Vict.* c. 22; 11 & 12 *Vict.* c. 7; and 23 & 24 *Vict.* c. 60.

King's books. They contain the *Valor Beneficiorum*, i.e., value of every ecclesiastical benefice and preferment, according to which valuation the first fruits and tenths are collected and paid, and the clergy rated. This value was certified by certain commissioners, pursuant to 26 Hen. VIII. c. 3, confirmed by 1 Eliz. c. 4.

King's silver, the money which was paid to the King, in the Court of Common Pleas, for a license granted to a man to levy a fine of lands, tenements, or hereditaments to another person; and this must have been compounded, according to the value of the land, in the alienation office, before the

fine would have passed.—2 *Inst.* 511. See FINE.

King's stores. See PUBLIC STORES.

King's widow, a widow of the king's tenant-in-chief, who was obliged to take oath in Chancery that she would not marry without the king's leave.

Kinsfolk, relations; those who are of the same family.

Kinsman, a man of the same race or family.

Kinswoman, a female relation.

Kintal or **Kintle** [fr. *centum*, Lat.], a hundred pounds in weight. See QUINTAL.

Kintledge, a ship's ballast. See KENTLAGE.

Kipper-time, the space of time between the 3rd of May and the Epiphany, in which fishing for salmon in the Thames, between Gravesend and Henley-on-Thames, was forbidden.—*Rot. Parl.* 50 *Edw. III.*

Kirby's Quest, an ancient record remaining with the remembrancer of the Exchequer, so called from its being the inquest of John de Kirby, treasurer to King Edward I.

Kirk [fr. *cyrce*, Sax.; κυριακή, Gk.], a church.

Kirk-note or **Kirk-mote**, a meeting of parishioners on church affairs.

Kirk-officer, the beadle of a church in Scotland.

Kirk-session, a parochial church court in Scotland, consisting of the ministers and elders of each parish.

Kist, stated payment, instalment of rent. —*Indian.*

Kleptomania [fr. κλέπτω, Gk., to steal; and μανία, frenzy], insanity in the form of an irresistible propensity to steal. Consult *Taylor's Med. Jur.*

Knaveship, a portion of grain given to a mill-servant from tenants who were bound to grind their grain at such mill. See THIRLAGE.

Knight, a title of honour next to baronets, entitling the person on whom it is conferred to be styled *sir*, and his wife *lady*. A knight is now made by the sovereign touching him with a sword as he kneels, and saying, 'Rise, Sir ——.'—*Encyc. Lond.*

Knightencourt, a court which used to be held twice a year by the Bishop of Hereford.

Knightenguild, an ancient guild or society formed by King Edgar.

Knighthood, the character or dignity of a knight. The union of chivalry with the feudal system, and the decay of both, gave rise to knight-service and the compulsion of landowners to become knights or pay a fine, but by 16 Car. I. c. 20, no man can be compelled to take the Order of Knighthood. See *Sir N. H. Nicholas' History of the Orders of Knighthood of the British Empire.*

Knight-marshal, an officer in the royal household who has jurisdiction and cognisance of offences committed within the household and verge, and of all contracts made therein —a member of the household being one of the parties.

Knight-service, formerly the most universal and most honourable species of tenure, being entirely military; a feudal tenure. Abolished by 12 Car. II. c. 24. See TENURE.

Knights bachelors [fr. *bas chevalier*, Fr.], the most ancient though lowest order of knighthood.—1 *Bl. Com.* 404. See BAS-CHEVALIERS.

Knights Banneret [*milites vexillarii*, Lat.], those created by the sovereign in person on the field of battle. They rank, generally, after Knights of the Garter.—1 *Bl. Com.* 403.

Knights of the Bath [*milites balnei*, Lat.], an order instituted by Hen. IV., and revived by George I. They are so called from the ceremony formerly observed of bathing the night before their creation.—*Dudg. Antiq. of Warw.* 531.

Knights of the Chamber [*milites cameræ*, Lat.], those created in the sovereign's chamber in time of peace, not in the field.—2 *Inst.* 666.

Knights' fee [*feodum militare*, Lat.], twelve plough-lands, the value of which was 20*l. per annum* (2 *Inst.* 596). By the grant of a knight's fee land, meadow and pasture may pass as parcel of it; and even a manor if it is usually called so. Consult *Shep. Touch.* 92, 93. Selden contends that it was as much as the king was pleased to grant upon condition of having the service of a knight.—*Tit. of Hon.* p. ii. c. v. ss. 17, 26. See TENURE.

Knights of the Garter [*equites garterii, vel periscelidis*, Lat.], otherwise called *Knights of the Order of St. George.* This Order was founded by Richard I., and improved by Edward III. A.D. 1344. They form the highest order of knights.

Knights of St. Michael and St. George, an order instituted in 1818.

Knights of St. Patrick, instituted in Ireland by George III. A.D. 1763. They have no rank in England.

Knights of the post, hireling witnesses.

Knights of the shire, members of Parliament representing counties or shires, in contradistinction to citizens or burgesses, who represent boroughs or corporations. A knight of the shire is so called because, as the terms of the writ for election still require, it was formerly necessary that he should be a knight. This restriction was coeval with the tenure of knight-service, when every man who received a knight's fee immediately of the Crown was constrained to be a knight; but at present any person may be chosen to fill the office

who is not an alien. The money qualification is abolished by 21 Vict. c. 26.

Knights of the Thistle. This order is said to have been instituted by Achaius, King of Scotland, A.D. 819. The better opinion, however, is that it was instituted by James V. in 1534, was revived by James VII. (James II. of England) in 1687, and re-established by Queen Anne in 1703. See *Nicholas' History of the Orders of Knighthood of the British Empire.* They have no rank in England.

Knopa, a knob, nob, bosse, knot.

Knot (nautical term), a division of the log-line, which answers to half a minute as a mile does to an hour—the 120th part of a mile. So a ship going eight miles in the hour, she is said to go eight knots.

Know-men, or *just-fast-men,* the Lollards in England.

Koran, or **Alcoran,** the Mohammedan book of faith. It contains both ecclesiastical and secular laws.

Kut-Kubala, a mortgage-deed or deed of conditional sale, being one of the customary deeds or instruments of security in India as declared by regulation of 1806, which regulates the legal proceedings to be taken to enforce such a security. It is also called *Byebil-wuffa.* See a form 8 *W. Rep.* 29.

Kymortha [Welsh], waster, rhymer, minstrel, or other vagabond who makes assemblies and collections.—*Barr. on Stat.* 360.

Kyst, Kysta, or **Kyste** [Sax.], a chest or coffin.

Kyth [fr. *cognatus,* Lat.], kin or kindred.

L.

Label [fr. *labellum,* Lat.], anything appended to a larger writing, as a codicil; a narrow slip of paper or parchment affixed to a deed or writ in order to hold the appending seal. It is also a term of heraldry.

Labina, watery land.—*Old Records.*

Laborariis, an ancient writ against persons who refused to serve and do labour, and who had no means of living; or against such as, having served in the winter, refused to serve in the summer.—*Reg. Orig.* 189.

Labour, Hard. See HARD LABOUR.

Labourers, servants in husbandry or manufactures, not living *intra mænia.* Various repealed Acts of Parliament (see, e.g., 5 Eliz. c. 4) have vested in the justices of the peace the power of compelling persons not having any visible livelihood to go out to service in husbandry, or in certain specific trades, for the promotion of honest industry. See further MASTER AND SERVANT.

Labourers' Dwellings. Prior to 1890, five sets of enactments provided for the erection and maintenance of healthy 'labourers' dwellings,' and the first three of the five were materially amended by the Housing of the Working Classes Act, 1885, 48 & 49 Vict. c. 72.

(1) The Labouring Classes Lodging Houses and Dwelling Houses Acts, 1851, 1866, and 1867 (14 & 15 Vict. c. 34; 29 Vict. c. 28; and 30 & 31 Vict. c. 28). These Acts might be 'adopted' by the town council of a borough, and other local authorities. Upon the adoption of the Acts, corporate land might be appropriated and lodging houses erected thereon, or money might be borrowed by the local authorities for the purpose of erecting such houses on other land.

The Act of 1885 amended the procedure for adopting these Acts, allowed land to be bought for the purpose of the Acts, and allowed separate houses to be erected under the process of the Acts.

(2) The Artisans and Labourers' Dwellings Act, 1868, 31 & 32 Vict. c. 130, amended by 42 & 43 Vict. c. 64, and 45 & 46 Vict. c. 54. Under this Act town councils and other urban sanitary authorities had power to direct the demolition or improvement of separate dwellings unfit for human habitation, and the building and maintaining of better dwellings in lieu thereof.

The Act of 1885 took away from an owner required to demolish such dwellings the power which he had under these Acts of requiring the local authority to purchase the dwellings of him.

(3) The Artisans and Labourers' Dwellings Improvement Act, 1875, 38 & 39 Vict. c. 36, amended by 42 & 43 Vict. c. 63, and 45 & 46 Vict. c. 54. Under this Act, which originally applied only to places having a population of 25,000 and upwards, a town council or other urban sanitary authority might frame schemes for the improvement of a body of houses, courts, or alleys, within particular areas. The schemes required the confirmation of the Local Government Board, the Metropolitan Board of Works, or a Secretary of State according as the improvements were to be effected in the country or in London.

The Act of 1885 extended these Acts to all urban sanitary districts.

(4) The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 111. By this enactment, which reproduced the repealed 'Working Men's Dwellings Act, 1874,' a municipal corporation might, with the approval of the Treasury, convert corporate land into sites for working men's dwellings, i.e., 'buildings suitable for the habitation of persons em-

ployed in manual labour, and their families,' and grant leases for that purpose for 999 years, or any shorter term, of any parts of the corporate land.

This enactment was untouched by the Act of 1885, and also by the consolidating Act of 1890 presently referred to.

(5) The Housing of the Working Classes Act, 1885, 48 & 49 Vict. c. 72, which amended the above enactments as above mentioned, and also enacted that settled land might be sold, let, or exchanged, for the erection thereupon of dwellings for the working classes at less than the market value, and that in letting a house or part of a house for habitation at a rent not exceeding, in England, 20*l.* in the Metropolis, 13*l.* in Liverpool, 10*l.* in Manchester or Birmingham, and 8*l.* elsewhere, and in Scotland or Ireland 4*l.*, 'there should be implied a condition that the house is at the commencement of the holding reasonably fit for human habitation—an important provision, exactly reproduced by s. 75 of the Act of 1890.

All these Acts are consolidated, with amendments of no very great importance, by the Housing of the Working Classes Act, 1890, 53 & 54 Vict. c. 70. This Act contains seven parts and seven schedules. Part I., relating to 'unhealthy areas,' substantially reproduces the Artisans and Labourers' Dwellings Improvement Acts of 1875, 1879, and 1882, with amendments in s. 21 and s. 24 restricting the amount of compensation to owners of unhealthy houses ordered to be demolished, and abolishing all restrictions upon the amount of rate to be levied to defray the expenses of reconstruction. Part II., relating to 'unhealthy dwelling houses,' substantially reproduces the Act of 1868 as amended by the Acts of 1882 and 1885, with an important amendment in s. 45 giving controlling powers to County Councils. Part III., relating to 'working-class lodging houses,' to a great extent reproduces the Acts of 1851 and 1866, but does not re-enact the elaborate provisions of the Act of 1851 as to the *mode* of adoption of the remaining parts. Part IV. is supplemental. Parts V. and VI. apply the Act, with slight modifications, to Scotland and Ireland respectively, and Part VII. is temporary.

Labourers, Statute of, 31 Edw. III. c. 7 (repealed as long obsolete by Statute Law Revision Act, 1863), whereby justices of the peace had power to regulate the rate of wages, which had risen to an abnormal height owing to the scarcity of labour arising out of the 'Black Death.' See *Lumley* v. *Gye*, 2 *E. & B.* 216, per Coleridge, J.

Labouring Classes. For special definition, taken from the Standing Orders of Parliament, see Metropolitan Police Act, 1886, 49 Vict. c. 22, s. 5, subs. 7.

Lac, Lak, Lakh, or **Lauk,** in Indian computation 100,000. The value of a lac of rupees is about 10,000*l.* sterling.

Lace, a measure of land equal to one pole. This term is widely used in Cornwall.

Lacerta, a fathom.—*Old Records.*

La Chambre des Esteilles, the Star-Chamber.—*Law French.*

Laches [fr. *lâcher*, Fr., to loosen], slackness, negligence in pursuing a legal remedy, whereby the party forfeits the benefit upon the principle *Vigilantibus ac non dormientibus jura subveniunt*, which see.

In the Sovereign there can be no negligence or laches. *Nullum tempus occurrit regi* was the maxim; and no delay in resorting to his remedy was held to bar the king's right. It followed, not only that the civil claims of the Crown received no prejudice by the lapse of time, but that prosecutions for felonies or misdemeanours (always brought in the Sovereign's name) might be commenced at any time after the offence. This is, in general, still law; but by statute it has been largely qualified; by 9 Geo. III. c. 16, the Crown is barred from its civil right in suits relating to land by the lapse of sixty years; by 32 Geo. III. c. 58, in informations for usurping corporate offices or franchises by the lapse of six years; and by 7 Wm. III. c. 3, an indictment for treason (except for an attempt to assassinate the Sovereign) must be found within three years after the act of treason.

Lacta, a defect in the weight of money.

Lacuna, a ditch or dyke; a furrow for a drain; a blank in writing.—*Old Records.*

Lada, purgation, exculpation. There were three kinds: (1) That wherein the accused cleared himself by his own oath, supported by the oaths of his consacramentals (compurgators), according to the number of which the *lada* was said to be either simple or threefold; (2) Ordeal; (3) Corsned. See CORSNED BREAD.

Also, a service which consisted in supplying the lord with beasts of burthen; or, as defined by Roquefort: *Service qu'un vassal devoit à son seigneur, et qui consistoit à faire quelques voyages par ses bêtes de somme.—Anc. Inst. Eng.*

Lada [fr. *lathian*, Sax.], a lath, or inferior court of justice; also a course of water; or a broad-way.

Lade or **Lode,** the mouth of a river.

Laden in bulk, freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunnage. Cargoes of corn,

salt, etc., are usually so shipped. See now 38 & 39 Vict. c. 88, s. 3.

Lading. See BILL OF LADING.

Lady, fr. *hlæf dig*, Sax., loaf-day, which words have in time been contracted into the present appellation. It was the fashion for the lady of the manor, once a week or oftener, to distribute to her poor neighbours, with her own hands, a certain quantity of bread. The title is borne by the wives of knights, and of all degrees above them, except the wives of bishops; but see DAME.

Lady-court, the court of a lady of the manor.

Lady-day, the 25th of March in every year, being the Annunciation of the Blessed Virgin, and one of the usual quarterly days for the payment of rent, etc. Lady-day, under the old style, was April 6th.

Lady's Friend, an officer of the House of Commons, whose duty it was to take care that a husband, who sued for a divorce, made a suitable provision for his divorced wife, if the House of Lords had not provided for it.

Lædorium, reproach.—*Girald. Camb.* c. 14.

Læsæ majestatis, Crimen, the crime of treason.—*Glanville,* l. 1, c. ii.

Læsis ultra dimidium vel enormis, the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject matter, e.g., when a vendor had not received half the value of property sold, or the purchaser had paid more than double value.—*Colq. Rom. Civ. Law,* s. 2094.

Læsione fidei, Suits pro, proceedings in the Ecclesiastical Courts for spiritual offences against conscience, for non-payment of debts, or breaches of civil contracts. By entertaining them the clergy attempted to turn the Spiritual Courts into tribunals for the administration of equity; but these suits were prohibited by the Constitutions of Clarendon. —10 *Hen. II.* c. 15.

Læt [fr. *litus, lidas, letus*], one of a class between servile and free.—*Palgrave,* i. 354.

Lætare Jerusalem, Easter offerings, so called from these words in the hymn of the day. They are also denominated *quadragesimalia.*

Læthe, or **Lathe,** a division or district peculiar to the county of Kent.—*Spelm.*

Lafordswic [fr. *hlaford,* Sax., lord, and *swic,* betrayal], a betraying of one's lord or master.

Laga, law.—*Old Term.*

Lagan [fr. *liggan,* Sax.], goods tied to a buoy and sunk in the sea; also a right which the chief lord of the fee had to take goods cast on shore by the violence of the sea.—*Bract.* l. 3, c. ii.; 5 *Co. Rep.* 106 *b.*

Lage-day, a day of open court; the day of the county-court.—*Cowel.*

Lage-man, a juror.—*Cowel.*

Lagen, a measure of six sextarii.—*Fleta,* l. 2, c. viii.

Lagh [fr. *laga,* Sax.], law. Obsolete.

Laghslite, a breach of law; a punishment for breaking the law.—*Cowel.*

Lagon. See LAGAN.

Lagotrophy [fr. λαγώς, Gk., a hare; and τρέφω, to nourish], a warren of hares.—*Encyc. Lond.*

Lagu, law; also used to express the territory or district in which a particular law was in force, as *Denalagu, Merena lagu, etc.*—See *Præfatio ad Wilk. L. Anglo-Sax.* 16.

Lahman, or **Lagemannus,** an old word for a lawyer.—*Domesday I.* 189.

Lah-slit, a mulct for offences committed by the Danes.—*Anc. Inst. Eng.*

Laia, a roadway in a wood.—*Mon. Angl.* t. 1, p. 483.

Laic [fr. λαός, Gk., people], one who is not in holy orders, or not engaged in the ministry of religion.

Lairwite, or **Lecherwite,** a fine for adultery or fornication, anciently paid to the lords of some manors.—4 *Inst.* 206.

Laity [fr. λαός, Gk., people], the people as distinguished from the clergy. See LAYMAN.

Lambard's Archaionomia, a work printed in 1568, containing the Anglo-Saxon laws, those of William the Conqueror, and of Henry I.

Lambard's Eirenarcha, a work upon the office of a justice of peace, which having gone through two editions, one in 1572, the other in 1581, was reprinted in English in 1599.

Lambeth degrees. Degrees conferred by the Archbishop of Canterbury. See CANTERBURY, ARCHBISHOP OF.

Lammas [said to be derived from a custom by which the tenants of the Archbishop of York were obliged, at the time of mass, on the 1st of August, to bring a live lamb to the altar. In Scotland they are said to wean lambs on this day. It may be corrupted from *latter-math.* Others derive it from a Saxon word, signifying *loaf-mass,* because on that day our forefathers made an offering of bread composed of new wheat], the gule or 1st of August, and the second of the four cross quarter-days of the year.—*Encyc. Lond.*; *Wheat. Com. Pr.*

Lammas Lands. Lands over which there is a right of pasturage by persons other than the owner, from about Lammas, or reaping time, until sowing time. See 2 & 3

Vict. c. 62, s. 13, as to commutation of tithe thereon, and see *Baylis* v. *Tyssen Amhurst*, 6 *Ch. D.* 500.

Lancaster, a county of England erected into a palatine in the reign of Edward III., and granted by him to his son John for life, that he should have *jura regalia* and a king-like power to pardon treasons, outlawries, etc., and make justices of the peace and justices of assize within the county, and all processes and indictments to be in his name. It is now vested in the Crown. It has a separate Chancery Court, the procedure of which is regulated by Acts of 1850, 1854, and 1890 (13 & 14 Vict. c. 43, 17 & 18 Vict. c. 82, and 53 & 54 Vict. c. 23), the third of these Acts conferring on the Court exactly the same jurisdiction as that of the Chancery Division of the High Court of Justice. See COUNTY PALATINE, and DUCHY COURT OF LANCASTER.

Lanceti, vassals who were obliged to work for their lord one day in the week, from Michaelmas to autumn, either with fork, spade, or flail, at the lord's option.—*Spelm.*

Land [fr. *terra*, Lat., fr. *terendo*, because it is ploughed], in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground on earth, as meadows, pastures, woods, moors, *waters*, marshes, furze, and heath; it includes also houses, mills, castles, and other buildings, for with the conveyance of the *land*, the *structures* upon it pass also. And besides an indefinite extent *upwards*, it extends *downwards* to the globe's centre, hence the maxim: —*Cujus est solum ejus est usque ad cœlum et ad inferos*, or more curtly expressed, *Cujus est solum ejus est altum.* See per Jessel, M. R., *In re Metropolitan District Railway Company and Cosh*, 13 *Ch. D.*, at p. 620.

In an Act of Parliament passed after 1850 'land' includes messuages, tenements and hereditaments, houses, and buildings of any tenure.—*Interpretation Act* 1889, s. 3.

Water, by a solecism, is held to be a species of land; e.g., in order to recover possession of a pool or rivulet of water, the action must be brought for the land, e.g., ten acres of *land covered with water*, and not for the *water* only.

Land Charge, a rent or annuity or principal moneys charged otherwise than by deed upon land under Act of Parliament for securing to any person the money spent by him, or under that Act, as a charge under the Land Drainage Act, 1861 (see DRAINAGE), or s. 29 of the Agricultural Holdings Act, 1883, for repayment of compensation of tenant's improvements. See s. 4 of the 'Land Charges Registration and Searches Act, 1888,' 51 & 52 Vict. c. 51, by s. 12 of which a 'land charge' created after the commencement of that Act, i.e., after 1st January, 1889, is void against the purchaser for value of the land charged therewith, unless it has been registered in the 'Register of Charges,' in the manner mentioned in that Act.

Land Commissioners, the title by the Settled Land Act, 1882, s. 48, of the commissioners formerly called 'The Copyhold Inclosure and Tithe Commissioners.' By s. 26 of that Act, a certificate of these commissioners that an 'improvement' within that Act has been effected is, in the absence of an Order of the Court, an authority to trustees to pay for the improvement out of 'capital money,' and by s. 28 a tenant for life must maintain and repair an 'improvement' at his own expense during such period, if any, as the commissioners by certificate in any case prescribe.

Land Drainage Act, 1861, 24 & 25 Vict. c. 133. See DRAINAGE, and IMPROVEMENT OF LANDS.

Land Drainage Act (Ireland), 1863, 26 & 27 Vict. c. 26, supplemented and amended by 26 & 27 Vict. c. 63; 35 & 36 Vict. c. 31; and 37 & 38 Vict. c. 32.

Land Registry Act, 25 & 26 Vict. c. 53. See TRANSFER OF LAND ACTS.

Land Revenues of the Crown. The greatest part of these have been from time to time granted by successive sovereigns to lords of manors and others, who now, for the most part, hold the prerogative rights of estrays, waifs, etc., as their own absolute property. These grants having greatly impoverished the patrimony of the Crown, an Act was passed in the reign of Queen Anne, whereby it was declared that all future grants or leases by the Crown for any longer term than thirty-one years, or three lives, should be void.—1 *Anne* st. 1, c. 7, amended and continued by the 34 *Geo. III.* c. 75. At the commencement of the reign of Geo. III., the hereditary revenues of the Crown, arising from renewals, fines, unclaimed estrays, escheats from manors held *in capite*, and such-like, being very uncertain, with all other hereditary revenues, were given up by His Majesty to the aggregate funds; and in lieu thereof His Majesty received 800,000*l.* a year for the maintenance of his civil list.—1 *Geo. III.* c. 1. By subsequent Acts (34 Geo. III. c. 57; 48 Geo. III. c. 73; 52 Geo. III. c. 161), these hereditary revenues were put under the management of commissioners, styled 'Commissioners of His Majesty's Woods, Forests, and Land Revenues.' This arrangement was confirmed by

1 Geo. IV. c. 1. See 14 & 15 Vict. c. 42, and 29 & 30 Vict. c. 62. By 1 Vict. c. 2, the amount granted for the support of the Queen's household, and of the honour and dignity of the Crown, etc., is 385,000*l.* See CIVIL LIST. As to Crown lands, see that title, and as to the private estates of the Crown, see CROWN PRIVATE ESTATE ACT.

Land Transfer Acts. See TRANSFER OF LAND ACTS.

Landa, an open field; a field cleared from wood.—*Old Records.*

Land-agende, Land-hlaford, or **Land-rica,** a proprietor of land; lord of the soil.—*Anc. Inst. Eng.*

Land-boc [Sax.] (*libellus de terra,* Lat.), the deed or charter by which lands were held.—*Spelm.*

Land-cheap, a fine paid in some places on the alienation of lands.—*Cowel.*

Landea, a ditch, in marshy lands, to carry water into the sea.—*Du Cange.*

Landed Estates Court (Ireland), the court which deals with the transfer of lands and the creation of title thereto in Ireland. This court is the successor of the Encumbered Estates Court, which latter was established to meet the exigencies of a time when the general distress of the country was aggravated by the fact that a great proportion of the land was in the hands of proprietors so needy and embarrassed that they were unable to do justice to the land, while the complicated state of the title prevented their finding a purchaser. The 11 & 12 Vict. c. 48 created the last-named court for the purpose of facilitating, and, in some cases, compelling the sale of lands in this condition, and at the same time creating an indefeasible title for the purchaser. This Act was subsequently enlarged by the 12 & 13 Vict. c. 77, and the 15 & 16 Vict. c. 67. Afterwards by the 21 & 22 Vict. c. 72, the court created for this purpose was made a permanent court under the style of the Landed Estates Court, and continues to discharge (with some modifications) the same functions as the Encumbered Estates Court. By the 28 & 29 Vict. c. 88, power is given to make a record of title of conveyances, of declarations, and of other interests in land under the control and by direction of the Landed Estates Court. The court consists of (two) judges and masters, and some subordinate officers. As to the record of titles conferred by the Landed Estates Court, see 28 & 29 Vict. c. 88. By 28 & 29 Vict. c. 101, transferable debentures may be charged on land by order of the court.

Landefrious, a landlord; a lord of the soil.

Landegandman, an inferior tenant of a manor.—*Spelm.*

Land-gabel, a tax or rent issuing out of land. Spelman says, it was originally a penny for every house. This *land-gabel,* or *land-gavel,* in the register of Domesday, was a quit-rent for the site of a house, or the land whereon it stood; the same with what we now call ground-rent.

Landgrave [fr. *land,* Germ., earth, and *graff,* or *grave,* judge or count], a name formerly given to those who executed justice on behalf of the German emperors, with regard to the internal policy of the country. It was applied, by way of eminence, to those sovereign princes of the empire who possess by inheritance certain estates called *land-gravates,* of which they received investiture from the emperor.—*Encyc. Lond.*

Landimers [*agrimensores,* Lat.], measures of land.—*Cowel.*

Landirecta, rights which charged the land whoever possessed it. See TRINODA NECESSITAS.

Landlord, he of whom land or tenements are holden; who has a right to distrain for rent in arrear, etc.—*Co. Litt.* 57. See *Woodfall* or *Foà* or *Smith* or *Fawcett* or *Soden and Smith* or *Redman and Lyon on Landlord and Tenant.*

Landlord and Tenant (Ireland) Act, 1870. 33 & 34 Vict. c. 46, amended by 35 & 36 Vict. c. 32.

Land-man [fr. *terricola,* Lat.], a terre-tenant.

Landmark, an object fixing the boundary of an estate or property.

Land-reeve, a person whose business it is to overlook certain parts of a farm or estate; to attend not only to the woods, and hedge-timber, but also to the state of the fences, gates, buildings, private roads, drift-ways, and watercourses; and likewise to the stocking of commons, and encroachment of every kind, as well as to prevent or detect waste and spoil in general, whether by the tenants or others; and to report the same to the manager or land-steward.—*Encyc. Lond.*

Lands Clauses Consolidation Act, 1845, 8 Vict. c. 18, amended by 23 & 24 Vict. c. 106, and 32 & 33 Vict. c. 18, applicable to England and Ireland, the public Act of Parliament whereby railway companies and other public bodies, authorised by special Act of Parliament to take the land of individuals for the purposes of such special Act, enter upon and make compensation for the land Until the passing of this *general* Act, which by ss. 3 and 5 applies to every undertaking authorised by any special Act passed after its date, which authorised or authorises the purchase or taking of lands for such undertaking, and is incorporated with such special Act except as

expressly excepted thereby, each *special* Act contained the necessary provisions.

Lands Clauses Consolidation Act (Scotland), 8 & 9 Vict. c. 19, amended by 23 & 24 Vict. c. 106, differs in form only from the above, most of the sections being word for word the same. A separate Act was necessitated by the difference of the Scotch procedure.

Land-steward, a person who overlooks or has the management of a farm or estate.

Land-tax, a tax laid upon land and houses, which has superseded all the former methods of taxing either property or persons in respect of their property, whether by tenths or fifteenths, subsidies on land, hydages, scutages, or talliages. Although generally a charge upon a landlord, yet it is a tax neither on landlord nor tenant, but on the beneficial proprietor, as distinguished from the mere tenant at rack-rent; and if a tenant have to any extent a beneficial interest, he becomes liable to the tax, *pro tanto*, and can only charge the residue on his landlord. Houses and buildings appropriated to public purposes are not liable to land-tax. As to its origin and inequality, see 3 *Hall. Cons. Hist.* 135; *Miller on the Land-tax.*

The sum *fixed* by 38 Geo. III. c. 5, to be paid for the land-tax in Great Britain, was 2,037,627*l.* 9*s.* 0¼*d.*, made up by contributions of *fixed* amount from the counties and boroughs as named by that Act. The tax was first imposed in 1698, and was therefore annual until 1798, when it was made perpetual by 38 Geo. III. c. 60, upon the basis of the valuation of 1698. The same Act provided for the redemption of the tax, but the redemption clauses were shortly afterward superseded by 42 Geo. III. c. 116, under which, together with 53 Geo. III. c. 123 and other Acts, of which the most important is 16 & 17 Vict. c. 117, which reduced the terms of redemption by 17½ per cent., redemption is still effected. Up to 1876 about 800,000*l.* of the original 2,000,000*l.* had been redeemed.

The sum assessed upon every tenant for land-tax is to be paid by the tenant, who may make a proportional deduction out of all rents; and disputes concerning the adjustment of this proportion are to be settled by the commissioners: but all agreements on the subject are valid between the parties, and it has now become a common practice, both in leases and grants of rent, to stipulate that no such deduction shall be made.

For the various statutes for the better regulation of land-tax, and its redemption, see *Chitty's Statutes*, vol. iii., tit. '*Land Tax.*'

Land-waiter, an officer of the custom-house, whose duty is, upon landing any merchandise, to examine, taste, weigh, or measure it, and to take an account thereof. In some ports they also execute the office of a coast-waiter. They are likewise occasionally styled *searchers*, and are to attend and join with the patent searcher in the execution of all cockets for the shipping of goods to be exported to foreign parts; and in cases where drawbacks on bounties are to be paid to the merchant on the exportation of any goods, they, as well as the patent searchers, are to certify the shipping thereof on the debentures.—*Encyc. Lond.*

Langeman, a lord of a manor.—1 *Inst.* 5.

Langeolum [fr. *lana*, Lat.], an under garment made of wool, formerly worn by the monks, which reached to their knees.—*Mon. Angl.* 419.

Languidus, sick, in ill health; a return made by a sheriff to a writ, when the removal of a person in his custody would endanger his life. See Ducks Tecum.

Lanis de crescentiâ Walliæ traducendis absque custumâ, etc., an ancient writ that lay to the customer of a port to permit one to pass wool without paying custom, he having paid it before in Wales.—*Reg. Orig.* 279.

Lano niger, a sort of base coin, formerly current in this kingdom.—*Men. in Scac.*

Lapidation, the act of stoning a person to death.

Lapis marmorius, a marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster Hall, where was likewise a marble chair erected on the middle thereof, in which our sovereigns anciently sat at their coronation dinner, and at other times the Lord Chancellor.

Lapis pacis. See Osculum Pacis.

Lapse [fr. *lapsus*, Lat.], error; failing in duty.

(1) A benefice is said to lapse when the patron does not exercise the right of presentation within six calendar months (182 days) after the avoidance of the benefice, exclusive of the day of the avoidance. In such case there is a devolution of the rights of patronage from a neglectful patron to the bishop as ordinary, to the metropolitan as superior, and to the sovereign as patron paramount of all the benefices in the realm.

(2) A devise or legacy is said to lapse when the devisee or legatee dies before the testator. In such case the devise or legacy falls into the residuary, real or personal estate as the case may be. If, however, the devisee or legatee should be a child or other issue of the testator, and should die leaving issue surviving at the testator's death, then, by the special operation of s. 33 of the Wills Act, 1 Vict. c. 26, the lapse is prevented, and such surviving issue takes the subject matter of

the devise or legacy; and see s. 32 of the same Act as to a devise for an estate-tail.

Larceny [fr. *larcin*, Fr.; *latrocinium*, Lat.], contracted from latrociny, the unlawful taking and carrying away of things personal, with intent to deprive the rightful owner of the same. Larceny is a species of felony. The statute law of England and Ireland relating to larceny and other similar offences is consolidated by 24 & 25 Vict. c. 96. Larceny is either simple or accompanied with circumstances of aggravation.

(1) Simple larceny, at common law, or plain theft. To constitute the offence there must be an unlawful taking, which implies that the goods must pass from the possession of a true owner (including one who has a qualified property only in the goods, as a bailee), and without his consent; where there is, then, no change of possession, or a change of it by consent, or a change from the possession of a person without title to that of the true owner, there cannot be a larceny. If a delivery be obtained from the owner by a person having *animus furandi* at the time, and he afterwards unlawfully appropriates the goods in pursuance of that intent, it is larceny. There must not be only a taking, but a carrying away (*cepit et asportavit*). A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away. It must be of personal goods, and not of the realty or things adhering thereto, or savouring thereof. The taking and carrying away must be with intent to deprive the owner of the thing taken, or, as it is expressed, *animo furandi*. Larceny may be committed of a thing the owner of which is unknown, provided it appear that there is some person other than the taker in whom the ownership resides. Larceny was formerly divided into *petit*, where the value of the property was not more than twelve pence, and *grand*, where it exceeded that amount; but now this distinction has been abolished (24 & 25 Vict. c. 96, s. 2). The punishment for simple larceny is in ordinary cases penal servitude for the term of three (now *five*, 27 & 28 Vict. c. 47) years, or imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if the offender be a male under the age of sixteen years, with or without whipping (s. 4).

(2) Larceny in a dwelling-house. Whosoever shall steal in any dwelling-house any chattel, money, or valuable security to the value of 5*l.* or more, shall be liable to be kept in penal servitude for any term not exceeding fourteen and not less than three (now *five*, 27 & 28 Vict. c. 47) years, or to be imprisoned for not more than two years, with or without hard labour, and with or without solitary confinement (24 and 25 Vict. c. 96, s. 60); and whosoever shall steal any chattel, money, or valuable security in a dwelling-house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be liable to the same punishment (s. 61).

(3) Larceny from the person. It is either,

(α) Privately stealing, as picking a person's pocket.

(β) Open and violent larceny from the person, or robbery, called by the civilians rapine, as to which see ROBBERY.

Embezzlement is distinguished from the offence of larceny as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. See EMBEZZLEMENT.

See as to larceny generally, *Archbold's* or *Roscoe's Crim. Evid.* and *Russell on Crimes.*

Larceny (Advertisement) Act, 1870, 33 & 34 Vict. c. 65. By 24 & 25 Vict. c. 96, s. 102, a penalty of 50*l.* is imposed on any person publishing an advertisement for the return of stolen goods 'without questions being asked.' This leading to vexatious actions by common informers against the publishers of newspapers, the Act of 1870 enacts that no such action be brought without the consent of the Attorney-General, etc.

Lardarius regis, the king's larderer, or clerk of the kitchen.—*Cowel.*

Larding money [fr. *lardarum*, Lat.]. In the manor of Bradford, in Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's wood, the fat of a hog being called lard; or it may be a commutation for some customary service of carrying salt or meat to the lord's larder.—*Mong. Angl.*, t. 1, p. 321.

Larsons [fr. *latro*, Lat.], thieves.

Lascar, a native Indian sailor; 'the term is also applied to tent pitchers, inferior artillery-men, and others.'—*Wilson's Indian Glossary.*

Lashite, or **Lashlite,** a kind of forfeiture during the government of the Danes in England.—*Encyc. Lond.*

Last [fr. *hlæstan*, Sax.; *lest*, Fr.], a burden; a weight or measure of fish, corn, wool, leather, pitch, etc.

Lastage, or **Lestage** [fr. *lastagium*, Lat.], a custom exacted in some fairs and markets to carry things bought whither one will. But it is more accurately taken for the ballast or lading of a ship. Also, custom paid for wares sold by the last, as herrings, pitch, etc.

Lastatinus, an assassin or murderer.—*Wals.*

Last Court, a court held by the twenty-four jurats in the marshes of Kent, and summoned by the bailiffs, whereby orders are made to lay and levy taxes, impose penalties, etc., for the preservation of the said marshes. —*Encyc. Lond.*

Last day of Term. On the last day of each of the four terms, the junior barrister present in every court of law, was entitled to make his motion the first, and so on, in order of juniority, to the senior outer barrister: afterwards, among the Queen's counsel and serjeants, the senior began. For the purposes of the administration of justice the division of the legal year into terms is abolished (Jud. Act, 1873, s. 26). See SITTINGS.

Last heir, he to whom lands come by escheat for want of lawful heirs; that is, in some cases the lord of whom the lands were held, but in others the Sovereign.—*Bract.* l. 7, c. xvii.

Last resort. A court from which there is no appeal is called the court of last resort.

Lata culpa dolo æquiparatur (*gross negligence is tantamount to fraud*). This maxim is only another form of the English one, 'Every man is taken to intend that which is the natural consequence of his actions.'

Latching, an underground survey.

Latent [fr. *latens*, Lat.], hidden, concealed; secret.

Latent ambiguity. See AMBIGUITY.

Latera, sidesmen, companions, assistants.

Laterare, to lie sideways, in opposition to lying endways, used in descriptions of lands.

Lath, or **Lathe**, a part of a county. In some counties there is an intermediate division between the shire and the hundred, as lathes in Kent, and rapes in Sussex; each of them containing three or four hundreds.

Lathreeve, Ledgreeve, or **Trithin-greve,** an officer under the Saxon government, who had authority over a lathe.—*Cowel.*

Latiner [fr. *latinier*, Fr., q. d. *latiner*], an interpreter, according to Coke (2 *Inst.* 515). It is suggested that it should be *latiner*, because he who understood Latin might be a good interpreter. Camden makes it signify a Frenchman or interpreter.—*Britan.*, f. 598.

Latin, the language of the ancient Romans. There are three sorts of law Latin:—(1) Good Latin, allowed by the grammarians and lawyers. (2) False or incongruous Latin, which in times past would abate original writs; though it would not make void any judicial writ, declaration, or plea, etc. (3) Words of art, known only to the sages of the law, and not to grammarians; called lawyers' Latin. —1 *Lit. Abr.* 146. But proceedings are now written in English.—4 *Geo. II.* c. 26.

Latinarius, an interpreter of Latin.

Latitat (*he lies hid*), a writ, whereby all persons were originally summoned to answer in personal actions in the Queen's Bench; so called because it is supposed by the writ that the defendant lurks and lies hid, and cannot be found in the County of Middlesex (in which the court is holden) to be taken by bill, but has gone into some other county, to the sheriff of which this writ was directed to apprehend him there.—*F. N. B.* 78; *Termes de la Ley;* 2 *Bl. Com*, 286. Abolished by the 2 Wm. IV. c. 39. See now SUMMONS, WRIT OF.

Lator [f.. *latus*, Lat.], a bearer, a messenger.—*Cole.*

Latro, he who has the sole jurisdiction *de latrone* in a particular place (mentioned in *Leg. W. I.*) See INFANGENTHEF.

Latrocination [fr. *latro*, Lat., a robber], the act of robbing; a depredation.

Latrocinium, the prerogative of adjudging and executing thieves; also, larceny, theft. —*Old Charter.*

Latrociny, larceny.

Latter-math, a second mowing; the aftermath.

Laudare, to advise or persuade; to arbitrate.

Laudatio, testimony delivered in court concerning an accused person's good behaviour and integrity of life. It resembled the practice which prevails in our trials, of calling persons to speak to a prisoner's character. The least number of the *laudatores* among the Romans was ten.

Laudator, an arbitrator.

Laudibus (de) Legum Angliæ. Sir John Fortescue, who had been some time chief justice of the King's Bench in the reign of Henry VI., is said to have written this work, while in exile with the Prince of Wales, and others of the Lancastrian party, in France. Sir John was then made chancellor; and in that character he supposes himself holding a conversation with the young prince ont he nature and excellence of the laws of England compared with the civil law and the laws of other countries. He considers at length the mode of trying matters of fact by jury, and shows how it excels that by witnesses. He informs us, that some of our princes wished to introduce the civil law merely for the sake of governing in the arbitrary way allowed by that law, which declares, *quod principi placuit legis habet vigorem.* He then proceeds to examine some other points of difference between the Civil and Common Law, always deciding in favour of our own. He concludes his book with a short account of the societies where the law of England was studied, the degrees and ranks in the profession, with the manner in which they were conferred; to these are

subjoined some short remarks on the conduct and delay of suits.—4 *Reeves*, 113.

Laudimium, the fiftieth part of the value of an estate, paid by a new proprietor to the tenant for investiture or leave of possession.—*Civil Law.*

Laudum, an arbitrament or award.—*Wals.*

Laughe, frank-pledge.—2 *Reeves*, 17.

Launcegay, a kind of offensive weapon, now disused, and prohibited by 7 Rich. II. c. 13.

Laund, or **Lawnd**, an open field without wood.—*Blount.*

Laurels, pieces of gold, coined in 1619, with the king's head laureated; hence the name.

Lavatorium, a laundry or place to wash in; a place in the porch or entrance of cathedral churches, where the priest and other officiating ministers were obliged to wash their hands before they proceeded to Divine service.

Lavina. See LABINA.

Law [fr. *lage*, *lagea*, or *lah*, Sax.; *loi*, Fr.; *legge*, Ital.; *lex*, fr. *ligo*, Lat., to bind], a rule of action to which men are obliged to make their moral conduct conformable.

The law of foreign countries is a question of fact. See FOREIGN LAW.

Law is also sometimes used as opposed to equity, meaning the principles followed in Common Law Courts in contradistinction to those which were administered only in Courts of Equity; now, however, in all branches of the Supreme Court and in inferior courts (Jud. Act, 1873, ss. 24, 89, 91) full effect is to be given to all equitable rights. See further s. 25, by which the law on several points has now been altered.—Consult 1 *Bl. Com.* s. 2, '*On the Nature of Laws in General*'; *Montesquieu, Esprit des Loix; Austin's Lectures.*

Law arbitrary, opposed to *immutable*, a law not founded in the nature of things, but imposed by the mere will of the legislature.

Law Agents (Scotland). By the 36 & 37 Vict. c. 63, the law relating to law agents (solicitors) practising in Scotland is amended, and new provisions are made in regard to their admission.

Law of Arms [fr. *lex armorum*, Lat.], the ordinances regulating proclamations of war, leagues, and treaties, etc.

Lawday, a court-leet, or view of frank-pledge.

Lawful. The natural meaning in a statute of the words 'it shall be lawful,' is permissive only, but if the words are used to effectuate a legal right, they are compulsory. *Julius* v. *Bishop of Oxford*, 5 *App. Cas.* 182.

Lawful Day, a day on which a court may sit.

Lawing of dogs, the cutting several claws of the forefeet of dogs in the forest, to prevent their running at deer.

Lawless court [*quia dicta sine lege*, Lat.], 'a tribunal held on King's Hill, at Rochford, in Essex, on Wednesday morning next after Michaelmas-day, yearly, at cock-crowing, at which court they whisper, and have no candle, nor any pen nor ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent.'—*Cam. Brit.* Obsolete.

Lawless man [*ex. lex*, Lat.], an outlaw.

Law List, a list of barristers, solicitors, and other legal practitioners, giving their addresses, and the dates of their entering the profession. The present 'Law List,' which has been published annually since 1801, is *primâ facie* evidence that the persons therein named as solicitors, or certificated conveyancers, are such.—23 & 24 *Vict.* c. 127, s. 22.

Law of marque, where they that are driven to it, take the shipping and goods of that people of whom they have received wrong, and cannot get ordinary justice, when they can take them within their own bounds and precincts.—27 *Edw. III.* st. 2, c. 17. See LETTERS OF MARQUE.

Law martial, the military law.

Law merchant [*lex mercatoria*, Lat.], that part of the law of England which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the Common Law, has been gradually engrafted into it and made to form part of it. See 1 *Bl. Com.* 67, 273; and *Introduction to Smith's Merc. Law.*

Law of the staple, the law merchant.—4 *Inst.* 235. See STAPLE.

Law Reports. Reports of judgments of Courts on points of law, published for the purpose of being used as precedents (see REPORTS). Prior to 1865, these reports were all executed and published as mere private speculations, one reporter or pair of reporters being usually though not always accredited by the chief judge of each court. In 1865 'The Incorporated Council of Law Reporting' began to publish monthly the reports called the *Law Reports*, which though they have no monopoly,—for contemporaneous monthly reports are published under the name of the *Law Journal*, and contemporaneous weekly reports under the names of *The Law Times Reports* and *The Weekly Reporter*,—possess a peculiar authority, being sometimes spoken of as 'the authorised reports.'

Law Society. See INCORPORATED LAW SOCIETY.

Law spiritual [*lex spiritualis*, Lat.], the ecclesiastical law.—*Co. Litt.* 344.

Law suit, an action or litigation.

Laws of Oleron, a maritime code said to have been drawn up by Richard I. at the Isle of Oleron, whence their name. They are constantly quoted in proceedings before the Admiralty Courts, as are also the Rhodian Laws.—*Co. Litt.* 11. See OLERON.

Law Terms. See TERMS.

Lawyer, a person learned in the law, as a counsel, or solicitor.

Lay [fr. λαός, Gk.], not clerical or not professional; regarding or belonging to the people, as distinct from the clergy or a particular profession.

Lay Corporations, bodies politic; they are either: (1) Civil, erected for temporal purposes; or (2) Eleemosynary, for charitable purposes.

Lay days, running or consecutive days; a term used as to the time of loading and unloading ships, etc. See DEMURRAGE.

Lay fee, lands held in fee of a lay lord, as distinguished from those lands which belong to the Church.

Lay impropriators, lay persons to whose use ecclesiastical benefices have been annexed. At the dissolution of the monasteries by stat. 27 Hen. VIII. c. 28, and 31 Hen. VIII. c. 13, the appropriations of the several parsonages which belonged to them were given to the king. The same had been done in former reigns when the alien priories were dissolved and given to the Crown. From these two roots have sprung all the lay impropriations or secular parsonages, they having been afterwards granted out from time to time by the Crown to laymen. See *Bl. Com.* 386. See APPROPRIATION.

Lay investiture of bishops, putting a bishop into possession of the temporalities belonging to his bishopric.

Laye [fr. *ley*, Old Fr.], law.

Laymen, one of the people, and not one of the clergy; (2) one who is not of the legal profession; (3) one who is not of a particular profession.

Lay people, jurymen. Obsolete.

Laystall [Sax.], a place for dung or soil.

Lazaret, or **Lazaretto,** places where quarantine is to be performed by persons coming from infected countries; to escape from them is felony.—6 *Geo. IV.* c. 78, s. 21.

Lea, or **Ley,** a pasture.—*Co. Litt.* 4 *b.*

Leading case. A case so frequently followed as to become invested with peculiar authority. The leading cases on important points of law were collected and published by Mr. Smith with copious notes in 1837, and a similar collection on points of equity, by Messrs. White and Tudor, in 1849. The 9th edition of the former collection was published in 1886, and the 6th of the latter in 1886.

Leading question, a question which suggests to a witness the answer which he is to make—a suggestive interrogation. Such questions are not allowed to be put except in cross-examination.

It is not easy to lay down any precise general rule as to what are leading questions: on the one hand, it is clear that the mind of the witness must be brought into contact with the subject of inquiry; on the other, that he ought not to be prompted to give a particular answer, or to be asked any question, to which *yes* or *no* would be conclusive. But how far it may be necessary to particularise, in framing the question, must depend upon the circumstances of each particular case.

If a witness by his conduct show himself decidedly adverse, it is in the discretion of the Court to allow him to be examined as if on cross-examination. The situation of the witness, and the inducements under which he may labour to give an unfair account, are material considerations in this respect.—*Tayl. on Evid.* s. 1262 *a.*

League [fr. *ligue*, Fr.; *ligo*, Lat.], a treaty of alliance between different states or parties. It may be offensive, or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy.

Also a measure equal to three English miles, or 300 geometrical paces.

Leakage, an allowance made to merchants for the leaking of casks or the waste of liquors.

Leal, *loyal*, belonging to law.

Leap-year. See BISSEXTILE.

Lease [either from *locatio*, Lat., the letting of property, or *laisser*, Fr., to let, or *leapum*, or *leasum*, Sax., to enter lawfully], sometimes also called *Demise* (*demissio*), is a grant of property for life, or years, or from year to year at will, by one who has greater interest in the property. The person granting is called the lessor, who is possessed of the reversion (as to a reversion being essential to a lease, see *Platt on Leases*, 9 *et seq.*); he to whom the property is granted, the lessee. The consideration is usually the payment of a rent or other annual recompense. The ancient operative words were 'demise, lease, and to farm let,' or 'demise and lease.'

Under a lease for years, the lessee must enter into the leased premises (unless, of course, he take by way of use), for before entry he has only an *interesse termini* by virtue of his common law assurance, a right

which can be assigned, but not surrendered, and which will never prevent the merger of two estates by its interposition, nor itself occasion a merger. The interest in a term *in futuro* is also called *interesse termini*.

By the Statute of Frauds (see FRAUDS) leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-third parts, at the least, of the full improved value of the thing demised, may be by parol or verbal contract; but all other leases were required to be in writing by the same statute; and the Act 8 & 9 Vict. c. 106, s. 3, has added the requirement of a *deed*; for which reason perhaps a 'lease' is very frequently understood to mean a lease by deed for a life or lives, or for years.

By the Judicature Act, 1873, s. 34, all causes and matters for the specific performance of contracts for leases are assigned to the Chancery Division of the High Court.

Lease and **release**, a mode of conveyance which derived its effect from the Statute of Uses, and operated by transmutation of possession compounded of a lease for a year, at Common Law, or a bargain and sale for a year under the Statute of Uses, and a Common Law release. This compound conveyance originated thus: The Statute of Enrolments (27 Hen. VIII. c. 16) seemed to be confined to cases where an estate of inheritance or freehold, or the use thereof, was to be made or take effect by reason only of a bargain and sale: it was therefore concluded that if a bargain and sale were first made for an estate less than freehold, as for one year, and then the inheritance or freehold were superadded by a separate deed of release, the transaction could not be affected by the statute; and that such release to the bargainee would be valid, without his entry upon the lands, as a consequence of the strong words, in the Statute of Uses, which converts *all vested uses* at once into legal estates. The convenience and general applicability of the lease and release recommended and established it as a common assurance. For it was preferable to a bargain and sale, and to a covenant to stand seised to uses, because it affected a transfer of the legal estate under the rules of the Common Law, and therefore the declaration of uses upon it needed not to be confined to persons from whom a consideration moved. It was also preferable to a bargain and sale, and still more to a feoffment, because no additional ceremony was necessary to its operation; but the transfer of property in land might have been effected by it in any part of the world, as instantaneously as the payment of money. And where the subject of conveyance was land in reversion or remainder, it was also preferable to a mere deed of grant, as it made it unnecessary for the grantee, if his title were called in question, to prove that there was a peculiar estate in existence at the time of the grant.

By 4 & 5 Vict. c. 21 (repealed by the Statute Law Revision Act, 1874, No. 2), conveyance by release without a lease was made effectual.

Leasehold, a dependent tenure derived either from a freehold or a copyhold estate.

Leases Ecclesiastical. Leases by ecclesiastical corporations are made under certain restrictions imposed by statutes, of which the principal one is the Ecclesiastical Leasing Act, 1842. See *Chitty's Statutes*, vol. iv., tit. '*Lease* (*Ecclesiastical*).'

Leases of settled estates. See SETTLED LAND.

Leasing, or **Lesing**, gleaning.

Leasing-making, slanderous and untrue speeches to the disdain, reproach, and contempt of the sovereign, his council, and proceedings, or to the dishonour, hurt, or prejudice of the sovereign or his ancestors. —*Scotch Acts*, 1584, 1585, 1703, c. 4.

Leave and License, a defence to an action in trespass setting up the consent of the plaintiff to the trespass complained of.

Leave to defend. The Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), allowed actions on bills or notes commenced within six months after being due, to be by writ of summons in a form provided by the Act, and, unless the defendant should within twelve days obtain leave to appear, and defend the action, allowed the plaintiff to sign judgment on proof of service. This procedure was retained by the Judicature Act, 1875, Ord. II., r. 6, but abolished in 1880 by Ord. II., r. 62.

By R. S. C. 1883, Ord. III., r. 6, it is provided that in all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, or possession where a tenancy has expired or been determined by notice to quit, the writ of summons may be especially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set off; in which case, if the defendant fail to appear, judgment may be signed for the amount claimed, and by Ord. XIV. it is further provided that where the defendant appears on a writ of summons especially endorsed, under Ord. III., r. 6, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a judge why the plaintiff should not be at liberty to sign final judgment for

the amount so endorsed, together with interest, if any, and costs; and the Court or judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or judge that he has a good defence on the merits, or disclose sufficient facts to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly (r. 1).

Leccator, a debauched person.—*Cowel.*

Lecherwite [fr. *legum*, Sax., to lie with; *wite*, penalty], a fine for adultery or fornication, anciently paid to the lords of certain manors.—4 *Inst.* 206. See LAIR-WITE.

Le congrès, a species of proof on charges of impotency in France, *coitus coram testibus.* Abolished A.D. 1677. See CONGRESSUS.

Lectrinum, a pulpit.—*Mon. Angl.* tom. iii., p. 243.

Lecturer [fr. *prælector*, Lat.], an instructor, a reader of lectures who has the copyright in them, if he be the author, by 5 & 6 Wm. IV. c. 65; also a clergyman who assists rectors, etc., in preaching, etc. See 7 & 8 Vict. c. 59, and 18 & 19 Vict. c. 127, s. 12.

Ledger-book, a book in the prerogative courts, considered as their rolls.

Ledgreve, or **Ledgrave**. See LATHREEVE.

Ledo, the rising water or increase of the sea.

Leeman's Acts. (1) 30 Vict. c. 29, by which contracts for sale of bank shares are void unless the numbers of the shares sold are set forth in the contract (this Act is believed to be a dead letter on the Stock Exchanges, but is (see *Neilson* v. *James*, 9 *Q. B. D.* 546) in full legal force); and (2) 35 & 36 Vict. c. 91, authorising the application of the funds of municipal corporations, and other governing bodies, under certain conditions, towards promoting or opposing Parliamentary and other proceedings for the benefit or protection of inhabitants.

Leet, Court, an inferior court in manors. See COURTS LEET.

Leets, or **Lects**, meetings which were appointed for the nomination or election of ecclesiastical officers in Scotland.—*Cowel.*

Lega, or **Lacta**, the alloy of money.—*Spelm.*

Legable [fr. *legabilis*, Lat.], capable of being bequeathed.

Legacy [fr. *legatum*, Lat.]. A legacy is a gift of personalty by will, and, arising as it does from the mere bounty of the testator, it is postponed to the claims of creditors. There are four kinds of legacies:—(1) *General*, when it does not amount to a bequest of any particular thing or money, as distinguished from all others of the same kind; as if a testator give A. a diamond ring, not referring to any particular diamond ring as distinguished from others. (2) *Specific*, when it is a bequest of a particular thing, or sum of money, or debt, as distinguished from all others of the same kind, as if a testator give B. 'my diamond ring.' (3) *Demonstrative*, when it is in its nature a general legacy, but there is a particular fund pointed out to satisfy it, as if a testator bequeath 1000*l.* out of his Reduced Bank Three per Cents. And (4) *Cumulative*, or *substitutional*, when a testator by the same testamentary instrument, or by different testamentary instruments, has bequeathed more than one legacy to the same person, and the question arises whether he intended the second legacy to be cumulative, i.e., in addition to the first, or substitutional for it. If by different instruments he has given legacies of equal, greater, or lesser sums to the same person, the Court, considering that he who has given more than once must, *primâ facie*, be intended to mean more than one gift, awards to the legatee all the legacies. If, however, they are not given *simpliciter*, but the motive of the gift is expressed, and in such instruments the *same motive* is expressed, and also the *same sum* is given, the Court considers these two coincidences as raising a presumption that the testator did not by a subsequent instrument mean another gift, but a repetition only of the former gift. See CUMULATIVE LEGACIES.

A legacy not exceeding 500*l.* can be recovered in the County Court.

If a legacy be bequeathed to a person to be paid or payable at the age of twenty-one, or any other age or certain determinate term, and the legatee die before that age, this is such an interest vested in the legatee immediately on the testator's death, that it goes to his executor or administrator, it being *debitum in præsenti*, though *solvendum in futuro*, the time being annexed to the payment and not to the gift itself; but if a legacy be bequeathed to a person at twenty-one, or if, or when, or in case, or provided he shall attain twenty-one, or at any future definite period, and he die before that age or period, the legacy lapses, these expressions being construed as annexing the time to the substance of the legacy, so that the right of the legatee is made to depend upon his being alive at the time fixed for its payment. The giving of interest on a legacy to a legatee, let the interest be ever so small, or a provision for his maintenance until the time for payment of the legacy, provided it be equal in amount to the interest, vests the legacy; but not, it seems, where the legacy is payable out of land, much less where anything appears on the will to show that the legacy was not intended to vest.

While it is a general rule that if a legatee die in the lifetime of the testator the legacy is lapsed and falls into the residue, except he have been a child of the testator who has left children, it is also a general rule that a trust-legacy does not lapse by the death of the trustee in the testator's lifetime, but that it survives for the benefit of the *cestui que trust*.

In the Roman Law a legacy was an injunction given to the heir to pay or give over a part of the inheritance to a third person. For its four kinds see *Sand. Just.*, 7th ed., 222, or *Cum. Civ. Law*, 160.

Legacy duty, a tax paid to government on legacies, rising from 1 to 10 per cent. in proportion to the distance of relationship between the testator and legatee. The Legacy Duty Acts are 36 Geo. III. c. 52; 45 Geo III. c. 28; 55 Geo. III. c. 184; 13 & 14 Vict. c. 97; 16 & 17 Vict. c. 51; and 44 Vict. c. 12. See also as to the collection or recovery of legacy duty, 24 & 25 Vict. c. 92; 28 & 29 Vict. c. 104, ss. 53—64; 31 & 32 Vict. c. 124, s. 9. Consult *Hanson on the Legacy and Succession Duties*, and see *Chitty's Statutes*, vol ii., tit. '*Executor's* (*Government Duties*).'

Legal, lawful; according to law. 2, opposed to equitable.

Legal assets. See ASSETS.

Legal debts, those that were recoverable in a court of Common Law, as debt on a bill of exchange, a bond, or a simple contract. See DEBTS.

Legal Estates. See ESTATES.

Legal reversion, the period within which a proprietor is at liberty to redeem land adjudged from him for debt. See *Bell's Dict.*

Legal tender. See TENDER.

Legalis homo, a person who stands *rectus in curia*, neither outlawed, excommunicated, nor infamous.

Legalis moneta Angliæ, lawful money of England.—1 *Inst.* 207.

Legality, or **Legalness**, lawfulness.

Legalize, to authorize; to make lawful.

Legally, lawfully; according to law.

Legamannus. See LAGEMAN.

Legantine or **Legatine Constitutions**, ecclesiastical laws enacted in national synods, held under the Cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III., about the years 1220 and 1268.

Legatary [fr. *legatum*, Lat.], a legatee.

Legate [fr. *degare*, *deligare*, Lat., to send], a deputy; an ambassador, the Pope's nuncio.

There are three kinds:—(1) Legates *à latere*, being such as the Pope commissions to take his place in councils, and so called, because he never gives this office to any but his favourites and confidants, who are always *à latere*—at his side. (2) Legates *de latere* or *legati dati*, those entrusted with apostolical legation, and acting under a special commission. (3) Legates *by office*, or *legati nati*, those that were legates by virtue of their offices, as, in England, the Archbishop of Canterbury in former times.—*Encyc. Lond.*

Legatee, one who has a legacy left to him.

Legation, an embassy or mission.

Legator, one who makes a will, and leaves legacies.

Legatos violare contra jus gentium est. 4 Co., *ad lect.*—(It is contrary to the law of nations to injure ambassadors.)

Legatum, a legacy given to the church, or an accustomed mortuary.—*Cowel.*

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sola. Dyer, 143.—(A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.)

Legatus regis vice fungitur à quo destinatur et honorandus est sicut ille cujus vicem gerit. 12 Co. 17.—An ambassador fills the place of the king by whom he is sent, and is to be honoured as he is whose place he fills.)

Legem facere, to make law upon oath. See *Selden's Notes on Heng.* 133.

Legem ferre, or **rogare** [Lat.], to propose a law.—*Rom.*

Legem habere, to be capable of giving evidence upon oath. Witnesses who had been convicted of crime, were incapable of giving evidence until 6 & 7 Vict. c. 85. See OATH.

Legem sciscere [Lat.], to give consent and authority to a proposed law, applied to the consent of the people.—*Rom.*

Leger, Leiger or **Ledger** [fr. *legger*, Dut., to lie], anything that lies in a place; as, a leger-book, a book that lies in a counting-house; leger-ambassador, a resident ambassador.

Legergild. See LAIRWITE.

Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitiorum.—(The laws of England are threefold: common law, customs, and decrees of parliament.)

Leges non verbis sed rebus sunt impositæ. 10 Co. 101.—(Laws are imposed on things, not words.)

Leges posteriores priores contrarias abrogant. 2 Rol. Rep. 410.—(Later laws abrogate prior contrary laws.)

Legiosus, litigious, subjected to a course of law.—*Cowel.*

Legis constructio non facit injuriam. Co

Litt.183. —(The construction of law does no injury.)

Legis interpretatio legis vim obtinet. Elles. Post. 55.—(The interpretation of law obtains the force of law.) See STATUTORY EXPOSITION.

Legislation, the act of giving or enacting laws.

Legislature, the power that makes laws; members of a legislative body.

Legitim, the legal share of the father's free movable property due on his death to his children. Where a father dies leaving a widow and children, his free movable estate is divisible into three equal parts; one-third part is divided equally amongst all the children, whether of his last or of any former marriage, as legitim: another third goes to his widow as her *jus relictæ*; and the remaining third is called 'dead's part,' which the father may dispose of as he pleases by will. If he die intestate, the 'dead's part' goes to his children as next of kin. If the father leave no widow the legitim is one-half instead of one-third.—*Bell's Scotch Law Dict.*

Legitimacy, lawful birth.

Legitimacy Declaration Act, 1858, 21 & 22 Vict. c. 93, which provides that any natural-born subject of the Queen, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply to the High Court of Justice for a decree, declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring that his own marriage was valid.

Legitimating, the act of making legal or of giving the right of lawful birth. As to legitimation in the Civil Law, see *Sand. Just.*, 5th ed., 38.

Legitimation *per subsequens matrimonium.* The legitimation of a bastard by the subsequent marriage of his parents.—*Bell's Scotch Law Dict.*

Legitime, that portion of a parent's estate of which he cannot disinherit his children without a legal cause.—*Civ. Law.* See LEGITIM.

Legitimi hæredes, *agnati* because the inheritance was given to them by a law of the Twelve Tables.—*Sand. Just.*, 7th ed., 280.

Legruita, a fine for criminal conversation with a woman.—*Old Records.*

Leidgrave [fr. *leid*, Lat.], an officer under the Saxon government who had jurisdiction over a lath.—*Encyc. Lond.* See LATH.

Leigh, a meadow.

Leipa, one who escapes or departs from service.—*Spelm.*

Le ley est le plus haut enheritance que le roy ad, car per le ley il mesme et touts ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra. 1 J. H. 6, 63.—(The law is the highest inheritance that the king possesses; for, by the law, both he and all his subjects are ruled; and if there were no law, there would be neither king nor inheritance.)

Lent [fr. *lenten*. Sax., spring], the quadragesimal feast; a time of abstinence; the time from Ash-Wednesday to Easter-day.

Leod, the people, nation, country, etc.—*Gibbon's Camd.*

Leodium, liege.

Leoht-gescot [*symbolum luminis*, Lat.], a tax for supplying the church with lights.—*Anc. Inst. Eng.*

Lep and Lace, a custom in the manor of Writtle, in Essex, that every cart which goes over Greenbury within that manor (except it be the cart of a nobleman) shall pay 4*d.* to the lord.—*Blount.*

Leporarius, a greyhound.—*Cowel.*

Leporium, a place where hares are kept.—*Mon. Angl.* t. 2, 1035.

Leproso amovendo, an ancient writ that lay to remove a leper or lazar, who thrust himself into the company of his neighbours in any parish, either in the church, or at other public meetings, to their annoyance.—*Reg. Orig.* 237.

Le Roy (or *la Reine*) *le veut.*—(The King (or the Queen) wills it.) The form of the royal assent to public bills in parliament.

Le Roy (or *la Reine*) *remercie ses loyal sujets, accepte leur bénévolence et ainsi le veut.* (The King (or the Queen) thanks his (or her) loyal subjects, accepts their benevolence, and wills it thus.) The form of the royal assent to a bill of supply.

Le Roy n'est lié par aucun statut, s'il ne fut expressément nommé.—(The king is not bound by any statute unless he be expressly named therein, as, e.g., in the Patents, etc., Act, 1883, and the Interpretation Act, 1889.)

Le Roy (or *la Reine*) *s'avisera.*—(The King (or the Queen) will consider of it.) The form of words used to express a denial of the royal assent.

Le salut du peuple est la suprême loi. Mont. Esp. des Lois, l. xxvii. ch. 23, cited *Broom's Max.*, 6th ed., 2 n.—(The safety of the people is the highest law.)

Leschewes, trees fallen by chance or windfalls.—*Bro. Abr.*, 341.

Lesia, a leash of greyhounds.—*Spelm.*

Lesion. See LÆSIO.

Les lois ne se chargent de punir que les actions extérieures.—(Laws charge themselves with punishing overt acts only)—that is, 'so long as an act rests in bare intention it is

not punishable.' See *Broom's Max.*, 6th ed., 305.

Lespegend, an inferior officer in forests to take care of the vert and venison therein, etc.

Les Prélats, Seigneurs, et Communes en ce présent Parlément assemblées, au nom de touts vos autres sujets, remercient très humblement votre Majesté, et prient à Dieu vous donner en santé bonne vie et longue.—(The prelates, lords, and commons, in this parliament assembled, in the name of all your other subjects, most humbly thank your Majesty, and pray to God to grant you in health a good and long life.) The form of words used by the clerk in an act of grace or indemnity, which originates with the Crown, or, so to speak, has the royal assent before it is agreed to by the two houses.

Lessa, a legacy.—*Mon. Angl.* tom. i., p. 562.

Lessee, the person to whom a lease is made or given.

Lessons, Table of, see 34 & 35 Vict. c. 37.

Lessor, one who lets anything to another by lease.

Lessor of the plaintiff. See EJECTMENT.

Lestagefry, lestage-free or exempt from the duty of paying ballast-money.—*Cowel.*

Lestagium, lastage, or lestage; a duty laid on the cargo of a ship.—*Cowel.*

Leswes, or **Lesues**, pastures.—*Domesday; Co. Litt.* 4 *b.*

Let, hindrance, obstruction.

Leta, a court-leet.

Lethal weapon, deadly weapon.

Letherwite. See LAIR-WITE.

Letter of absolution, the mode formerly resorted to by an abbot for the release of his brethren, in order to qualify them for entering into some other order of religion.

Letter of credit, a letter written by a merchant or correspondent to another, requesting him to credit the bearer with a certain sum of money.

Letter of exchange, a bill of exchange, which see.

Letter of horning. See HORNING.

Letter of license, an instrument in writing whereby the creditors of a man who had failed to meet his engagements, gave him time for the payment of his debts, and undertook that in the meantime he should be free from arrest. Imprisonment for debt was abolished by 32 & 33 Vict. c. 62.

Letters of administration. See ADMINISTRATOR.

Letters of attorney, Power of attorney, or **Procuration**, a writing authorising another person, who, in such case, is called the attorney of the person appointing him to do any lawful act in the stead of another: as to give seisin of lands, receive debts, or sue a third person, etc. It is either general or special. The nature of this instrument is to give the attorney the full power and authority of the maker to accomplish the act intended to be performed; sometimes it is revocable, sometimes not. If it is an authority coupled with an interest; e.g., if the attorney is authorised to collect debts, and pay thereout a debt due to himself, it is irrevocable. But revocable letters of attorney may be dissolved either by acts of the parties or operation of law. See REVOCATION OF AGENCY.

No person making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney is liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead or had become lunatic or bankrupt, or had revoked the power before such payment or act, if the death, etc., was not known to him at the time of the payment or act.—*Conveyancing etc. Act*, 1881, s. 47, extending 22 & 23 Vict. c. 35, s. 26, which applied to trustees, etc., only, and to the case only of death of the donor of the power.

Letter-claus (*literæ clausæ*), close letter, so called in contradistinction to letters-patent, because the former is commonly sealed up with the royal signet, or privy seal; whereas letters-patent are left open and sealed with the broad seal.

Letters of marque, commissions for extraordinary reprisals for reparation to merchants taken and despoiled by strangers at sea, grantable by the secretaries of state, with the approbation of the sovereign and council; and usually in time of war, etc.—*Lex Merc.* 173. The words *marque* and *reprisal* are used as synonymous terms, although the latter is strictly, taking in return; the former, passing the frontiers in order to such taking.—*Dufresne*, tit. '*Marca.*'

These letters are grantable by the law of nations, wherever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs. In this case, letters of marque and reprisal may be obtained in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found; and, in fact, this custom seems dictated by nature. The necessity, however, is obvious of calling in the sovereign power to determine when reprisals may be made, else every private sufferer would be a judge in his own cause.—4 *Hen. V.* c. 7; *Muratori's Antichità Italiane*, tit. '*Rappresaglie*'; *Malvezzi's Chron. of Brescia.*

But the term itself is now somewhat differently applied. If during war a subject

should take an enemy's ship, without commission from the Crown, the prize would, by the effect of the prerogative, become a droit of admiralty, and would belong, not to the captor, but to the Crown. To encourage merchants and others to fit out privateers or armed ships in time of war, the lords of the admiralty have been in former times empowered, by various Acts of Parliament, and sometimes by proclamation of the sovereign in council, to grant commissions to the owners of such ships, and the prizes captured by them have been directed to be divided between such owners and the captains and crews. But the owners, before the commission is granted, give security to the admiralty to make compensation for any violation of treaties between those powers with whom the nation is at peace; and that such armed ship shall not be employed in smuggling. These commissions were called letters of marque, in which sense alone the term is now accepted.—2 *Steph. Com.* By Order in Council, dated 29th of March, 1854, 'general reprisals' were granted against the ships, vessels, and goods of the Emperor of Russia, and to give the benefit of all the prizes taken by Her Majesty's ships to the captors.

On the 16th of April, 1856, the plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, assembled in congress at Paris, signed a declaration, of which the first article was 'Privateering is and remains abolished.' They also engaged, on behalf of their respective governments, that the declaration should be brought to the knowledge of the states which had not taken part in the congress, and that they should be invited to accede to it. It was agreed that the declarations should not be binding except between those powers who had acceded or should accede to it.—*Phillimore on International Law.* The United States of America were invited to accede to this declaration, but declined.

Letter-missive. When a peer was made a defendant in the Court of Chancery, the Lord Chancellor sent a letter-missive to him, to request his appearance, together with a copy of the bill, petition, and order; if he neglected to appear to this, he was then served with a copy of the bill and a citation to appear and answer; if he continued still in contempt, a sequestration *nisi*, which was made absolute in the usual way, issued immediately against his lands and goods, without any of the arresting processes of attachment, etc., which cannot affect a lord of Parliament. See 1 *Dan. Ch. Pr.*

Also, for electing a bishop, a letter-missive from the sovereign is sent to the dean and chapter, containing the name of the person whom he would have them elect. See CONGE D'ELIRE.

Letters-patent, or **Letters overt** [fr. *literæ patentes*, Lat.], writings of the Queen, sealed with the Great Seal of England, whereby a person or public company is enabled to do acts or enjoy privileges which he or it could not do or enjoy without such authority.—7 *Wm. IV.* and 1 *Vict.* c. 73. They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority thereby given. Peers are sometimes created by letters-patent, and letters-patent of precedence are granted to barristers. By letters-patent aliens are made denizens, and especially new inventions are protected; hence the incorporeal chattel of patent-right.

A 'patent-right' is a privilege granted by the Crown to the first inventor of any new contrivance in manufactures, that he alone shall be entitled, during a limited period, to make articles according to his own invention.—21 *Jac. I.* c. 3. A manufacture, to be the subject of a patent-right, must be new within this realm, and must be such as others at the time of granting such letter-patent do not use. The person applying for the patent must be the true and first inventor of it; yet where the secret is acquired abroad by one who afterwards introduces it into the realm, he is considered by the law as the true inventor. A patent-right granted as to England will not extend to Ireland.

The various statutes regulating the procedure for obtaining a patent were consolidated, with amendments, in 1883, by the Patents, Designs, and Trade Marks Act, 1883, 46 & 47 Vict. c. 57, which, proceeding on the principle that an inventor is a person to be encouraged, greatly reduced the fees payable, first bound the Crown by a patent, and, in favour of the public, instituted a system of compulsory licenses to be granted by a patentee who should be proved not to be working his patent in the United Kingdom, or otherwise failing to satisfy the reasonable requirements of the public. The Act of 1883 is amended in many particulars by the Patents, Designs, and Trade Marks Act, 1888, 51 & 52 Vict. c. 50, by s. 1 of which no person after July 1st, 1889, is to be entitled to describe himself as a 'patent agent' unless he is registered as such. Consult *Hindmarch*, *Godson*, or *Coryton on Patents.*

Letters of request, the mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court.

These letters dispense with instituting a suit in an inferior ecclesiastical jurisdiction,

and authorise it in the superior court, otherwise only a court of appeal. The judge of the inferior court waives his jurisdiction, which attaches to the appellate court, without consent from the intended defendant.—1 *Hagg. Eccl. R.* 4, note (*a*).

Letters of safe-conduct. No subject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our subjects, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the Great Seal, and enrolled in Chancery, or else are of no effect—the Sovereign being the best judge of such emergencies as may deserve exemption from the general law of arms.—*Chitty's Prerogatives of the Crown*, p. 48, and *Vattel by Chit.* 416. But passports or licenses from our ambassadors abroad are now more usually obtained, and are allowed to be of equal validity.

Lettres de cachet. See CACHET.

Leuca, a measure of land, the extent of which is not precisely known. Some say 1500 paces. Ingulphus, p. 910, says 2000 paces. In the *Monastic.*, tom. i., p. 313, it is 480 perches. Spelman says a mile.

Leucata, a space of ground as much as a mile contains.—*Monastic.*, tom. i., p. 768. And so it seems to be used in a charter of William the Conqueror to Battle Abbey.—*Cowel.*

Levant et couchant [*levantes et cubantes*, Lat.], cattle that have been so long in the ground of another, that they have lain down and risen to feed, supposed to be a day and a night.—*Termes de la Ley.*

Levari facias (*that you cause to be levied*), a writ of execution at Common Law, commanding the sheriff to levy or make of the lands and chattels of the judgment-debtor the sum recovered by the judgment. The sheriff was not authorised to sell or extend the lands, or deliver them to the creditor, but could only collect the debt from the issues and profits of the land, and from the sale of the chattels. This writ, long superseded by the writ of *elegit*, has been formally abolished by the Bankruptcy Act, 1883, s. 146, subs. 2.

Leviable, that may be levied.

Levirate [fr. *levir*, Lat., husband's brother or brother-in-law], an ancient law, prior to the time of Moses (Gen. xxviii. 8—12), by which, if a husband died without issue, leaving a widow, the brother of the deceased, or the nearest male relation, was bound to marry the widow, to give to the first-born son the name of the deceased kinsman, to insert his name in the genealogical register, and to deliver into his possession the estate of the deceased. See *Matt.* xxii. 23—28.

The same custom or law prevails in some parts of India.—*Elliot's Asiatic Researches*, vol. iii., p. 35.

Levitical degrees, degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of Leviticus. By 32 Henry VIII. c. 38, it is declared that all persons may lawfully marry, but such as are prohibited by God's law; and it is declared by the same statute, that 'no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees.'—1 *Broom & Had. Com.* 528; 2 *Steph. Com.*

Levy [fr. *levo*, Lat.], the act of raising money or men.

Lex, law. In the Roman law it was a resolution adopted by the whole Roman *populus* (Patricians and Plebeians) in the *comitia*, on the motion of a magistrate of senatorial rank, as a consul, a prætor, or a dictator.

Lex aliquando sequitur æquitatem. 3 Wils. 119.—(Law sometimes follows equity.)

Lex amissa, one who is an infamous, perjured, or outlawed person.—*Bract.* lib. 4, c. xix., p. 2. See LIBERAM LEGEM AMITTERE.

Lex Angliæ est lex misericordiæ. 2 Inst. 315.—(The law of England is a law of mercy.)

Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat. Co. Litt. 123.—(The law of England rules that the offspring shall always follow the condition of the father; never that of the mother.)

Lex Angliæ nunquam sine Parliamento mutari potest. 2 Inst. 218.—(The law of England cannot be changed but by Parliament.)

Lex apostata, a thing contrary to law.—*Jacob.*

Lex beneficialis rei consimili remedium præstat. 2 Inst. 689.—(A beneficial law affords a remedy for a similar case.)

Lex Brehonia, the Brehon or Irish Law, overthrown by King John.

Lex Bretoise, the law of the ancient Britons, or Marches of Wales.—*Cowel.*

Lex citius tolerare vult privatum damnum quam publicum malum. Co. Litt. 132.—(The law will more readily tolerate a private loss than a public evil.)

Lex deficere non potest in justitiâ exhibendâ. Co. Litt. 197.—(The law cannot be defective in dispensing justice.)

Lex deraisnia, the proof of a thing which one denies to be done by him, where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability; this was used among the old Romans as well as the Normans.—*Cowel.*

Lex dilationes semper exhorret. 2 Inst. 240.—(The law always abhors delays.)

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet. Co. Litt. 319 *b*.—(Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.)

Lex finget ubi subsistit æquitas. 11 Co. 90. —(The law makes use of a fiction where equity subsists.) This is the maxim by which the law sought to reconcile theoretical consistency with substantial justice, but the latter is no longer considered to derive support from transparent fictions.

Lex fori, the law of the place of action.

The forms of remedies, modes of proceeding, and execution of judgments are regulated by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori*.

Lord Brougham, in *Don* v. *Lippman*, 5 *Clark & Fin.* 1, remarks (citing *British Linen Co.* v. *Drummond*, 10 *B. & C.* 903) :—'The law on this point is well settled, that whatever relates to the remedy must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made.'

Lex hostilia de furtis, a Roman law which provided that a prosecution for theft might be carried on without the owner's intervention.—4 *Steph. Com.*

Lex judicat de rebus necessariò faciendis quasi re-ipsâ factis.—(The law judges of things which must necessarily be done, as if actually done.)

Lex judicialis, an ordeal.—*Leg. H.* 1.

Lex Julia majestatis, a law promulgated by Augustus Cæsar among the Romans, comprehending all the ancient laws that had before been enacted to punish transgressors against the state.—4 *Steph. Com.*

Lex loci contractûs (*the law of the place of the contract*). Generally speaking, the validity of a contract is decided by the law of the place where it was made. If valid there, it is, by the general law of nations (*jure gentium*), held valid everywhere, by the tacit or implied consent of the parties. The rule is founded not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of purchases and sales, of mutual credits, and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles, would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes.

The same rule applies to the invalidity of contracts; if void or illegal by the law of the place of the contract, they are generally held void and illegal everywhere. This would seem to be a principle derived from the very elements of natural justice. The code expounds it:—*Nullum enim pactum, nullam conventionem, nullum contractum, inter eos videri volumus subsecutum, qui contrahunt lege contrahere prohibente* (l. i., tit. 14, l. 5). If void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country. But there is an exception to the rule as to the universal validity of contracts: —'No nation is bound to recognise or enforce any contracts injurious to its own interests, or its subjects.' See CONFLICT OF LAWS, and *Story's Confl. of Laws*, c. viii.; and consult *Westlake's Pr. Inter. Law.*

Lex loci rei sitæ (*the law of the place where the thing is situate*). It is sometimes also called *lex sitûs*. As to real or immovable property, the general rule of the Common Law is, that the laws of the place where such property is situate exclusively govern in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them. The title, therefore, to real property can be acquired, passed, and lost only according to the *lex loci rei sitæ*.—*Story's Confl. of Laws*, s. 424. See also *Westlake on Private International Law.*

Lex mercatoria, the mercantile law or general body of European usages in commercial matters.—1 *Steph. Com.*

Lex necessitatis est lex temporis, i.e., *instantis*. Hob. 159.—(The law of necessity is the law of the time; that is, of the moment.)

Lex neminem cogit ad vana seu inutilia peragenda. 5 Co. 21.—(The law forces no one to do vain or useless things.)

Lex neminem cogit ostendere quod nescire præsumitur. Lofft. 569.—(The law compels no one to show that which he is presumed not to know.)

Lex nemini operatur iniquum, nemini facit injuriam. Jenk. Cent. 22.—(The law works harm to no one: does injury to no one.)

Lex nil facit frustra; nil jubet frustra. 3 Buls. 279; Jenk. Cent. 17.—(The law does nothing vainly; commands nothing vainly.)

Lex non scripta, the unwritten or common law, which includes general and particular customs, and particular local laws. See COMMON LAW, and 1 *Steph. Com.*

Lex non à rege est violanda. Jenk. Cent. 7. —(The law is not to be violated by the king.)

Lex non cogit ad impossibilia. Hob. 96.—(The law forces not to impossibilities.)

Lex non curat de minimis. Hob. 88.—(The law cares not about trifles.)

Lex non favet delicatorum votis. 9 Co. 58.—(The law favours not the wishes of the dainty.)

Lex non intendit aliquid impossibile. 12 Co. 89.—(The law intends not anything impossible.)

Lex non patitur fractiones et divisiones statutorum. 1 Co. 87.—(The law suffers no fractions and divisions of statutes.)

Lex non præcipit inutilia, quia inutilis labor stultus. Co. Litt. 197.—(The law commands not useless things, because useless labour is foolish.)

Lex non requirit verificari quod apparet curiæ. 9 Co. 54.—(The law does not require that that which is apparent to the Court should be proved.)

Lex ordinandi, the same as *lex fori* (*q.v.*).

Lex plus laudatur quando ratione probatur. Litt. Epil.—(The law is more praised when it is approved by reason.)

For Lord Coke declares, 'that the law is unknown to him that knoweth not the reason thereof; and that the known certainty of the law is the safety of all.'—1 *Inst. Epil.*

Lex posterior derogat priori. See *Mackeld. Civil L.* 5.—(A later statute takes away the effect of a prior one.) But the later statute must either expressly repeal, or be manifestly repugnant to the earlier one. See *Broom's Max.*, 5th ed., 22.

Lex prospicit non respicit. Jenk. Cent. 284.—(The law looks forward, not backward.)

Lex rejicit superflua, pugnantia, incongrua. Jenk. Cent. 133.—(The law rejects superfluous, contradictory, and incongruous things.)

Lex reprobat moram. Jenk. Cent. 35.—(The law dislikes delay.)

Lex respicit æquitatem. Co. Litt. 24 *b.*—(The law pays regard to equity.) *Broom's Max.*, 5th ed., 151.

Lex sacramentalis, purgation by oath.—*Leg. H.* 1.

Lex scripta, the written or statute law.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et si quâ in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non appareat, tunc jus quo urbs Romana utitur servari oportet. 7 Co. 19.—(If the written law be silent, that which is drawn from manners and customs ought to be observed; and if that is in any matter defective, then that which is next and analogous to it. [See ANALOGY; COMMON LAW; and the remarks of Parke, J., in *Mirehouse* v. *Rennel*, 8 *Bing*, 515.] And if that does not appear, then the law which Rome uses should be followed.)

The last maxim of Lord Coke is so far followed at the present day that, in cases where there is no precedent of the English courts, the Civil Law is always heard with respect, and often, though not necessarily, followed.

Lex semper dabit remedium.—(The law will always give a remedy.)

Lex semper intendit quod convenit rationi. Co. Litt. 78 *b.*—(The law always intends what is agreeable to reason.)

Lex spectat naturæ ordinem. Co. Litt. 197 *b.*—(The law has regard to the order and course of nature.)

Lex talionis, the law of retaliation. The law of retaliation was common among all ancient nations, as the best means of protection; but, in progress of time, when manners had assumed a milder tone, bodily injuries were brought into the civil courts, and the punishment to be inflicted, or the satisfaction to be rendered, was left entirely to the judge. —*Br. & Had. Com.* iv. 8.

Lex terræ, the law and custom of the land.

Lex uno ore omnes alloquitur. 2 Inst. 184.—(The law speaks to all with the same mouth.)

Lex Wallensica, the Welsh law.

Ley, or **Loi**, law; the oath with compurgators; also a meadow.

Ley gager, a wager of law; one who commences a lawsuit.—*Cowel.*

Leyerwite. See LAIRWITE.

Leze-majesty, an offence against sovereign power: treason; rebellion.

Liard, a farthing.

Libel [fr. *libellus*, Lat.; *libelle*, Fr.], defamatory writing. All contumelious matter that tends to degrade a man in the opinion of his neighbours, or to make him ridiculous, will amount (when conveyed in writing, or by picture, effigy, or the like) to libel. The term also legally includes such writings as are of a blaspheming, treasonable, seditious, or immoral kind.

Both the author and the publisher of a libel are liable to be either sued or indicted by the party libelled, but it is a defence in either case that the matter complained of was written or printed on what is called a *privileged occasion*, i.e. upon an occasion which justified the writing or printing of it, e.g., that the defendant was giving a character of a servant, or commenting upon a matter of general interest to the public. In furtherance of this, the Libel Law Amendment Act, 1888, 51 & 52 Vict. c. 64, gives 'privilege' to fair and accurate newspaper reports of proceedings of a court, or public meeting.

It is a good defence to an action of libel, that the libel was true. See *l'Anson* v. *Stuart*, 2 *Sm. L. C.* But to be a defence to an indictment, a plea justifying on the ground of the truth of the libel must further allege that

its publication was for the public good (6 & 7 Vict. c. 96, s. 6). As to newspaper libels, see NEWSPAPER, and for the law of the subject generally, consult *Folkard's Treatise* (founded on *Starkie*) and *Odgers' Digest*, 2nd ed.

2. In the *spiritual* court a libel is the declaration, or written charges on the plaintiff's behalf, in the civil litigation. It consists of three parts:

(1) The major proposition, which shows a just cause of the petition. (2) The narration, or minor proposition. (3) The conclusion, or conclusive petition, which conjoins both propositions.

In the Scotch law it is the form of the complaint or ground of the charge, on which either a civil action or criminal prosecution takes place.—*Bell's Scotch Law Dict.*

Libellant, the suitor plaintiff who files a libel in an ecclesiastical case.

Libellee, the suitor defendant against whom a libel has been filed.

Libelli famosi, scurrilous publications of a libellous nature. See LIBEL.

Libellus conventionis, the statement of a plaintiff's claim in a petition presented to the magistrate, who directed an officer to deliver it to the defendant.—*Civ. Law.*

Liber assisarum, the book of assizes or pleas of the Crown, being the fifth part of the year-books.

Liber feudorum, a code of the feudal law, compiled by direction of the Emperor Frederick Barbarossa, and published at Milan, A D. 1170.

Liber homo, a freeman.

Liber judicialis of Alfred, Alfred's domebook, which see.

Liber niger domûs regis (*the black book of the king's household*), the title of a book in which there is an account of the household establishment of King Edward IV., and of the several musicians retained in his service, as well for his private amusement as for the service in his chapel.—*Encyc. Lond.*

Libera, a livery or delivery of so much corn or grass to a customary tenant, who cut down or prepared the said grass or corn, and received some part or small portion of it as a reward or gratuity.—*Cowel.*

Libera batella, a free boat, a right of fishing.

Libera chasea habenda, a judicial writ granted to a person for a free chase belonging to his manor, after proof made by inquiry of a jury that the same of right belongs to him.

Libera piscaria, a free fishery.

Libera wara, a free measure of ground.

Liberam legem amittere, *to lose one's free law* (called the villainous judgment), to become discredited or disabled as juror and witness, to forfeit goods and chattels and lands for life, to have those lands wasted, houses razed, trees rooted up, and one's body committed to prison. It was anciently pronounced against conspirators, but is now disused, the punishment substituted being fine and imprisonment.—*Hawk P. C.* 61, c. lxxii., s. 9; 3 *Instit.* 221.

Liberata pecunia non liberat offerentem. Co. Litt. 207.—(Money being restored, does not set free the party offering.)

Liberate, a writ that lay for the payment of a yearly pension or other sum of money, granted under the Great Seal, and addressed to the treasurer and chamberlain of the Exchequer. Also a writ to the sheriff for the delivery of possession of lands and goods extended or taken upon the forfeiture of a recognisance. Also a writ that issued out of Chancery, directed to a gaoler, for delivery of a prisoner that has put in bail for his appearance.—*F. N. B.* 432.

Liberatio, money, meat, drink, clothes, etc., yearly given and delivered by the lord to his domestic servants.—*Blount.*

Liberation, payment.—*Civ. Law.*

Libertas ecclesiastica, church liberty, or ecclesiastical immunity.

Libertas est naturalis facultus ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur. Co. Litt. 116.—(Liberty is that natural faculty which permits every one to do anything he pleases except that which is restrained by law or force.)

Libertate probandâ, an ancient writ which lay for such as being demanded for villeins offered to prove themselves free; addressed to the sheriff, that he should take security from them for the proof of their freedom before the justices of assize, and that in the meantime they should be unmolested.—*F. N. B.* 77.

Libertates regales ad coronam spectantes ex concessione regum à coronâ exierunt. 2 Inst. 496.—(Royal franchises relating to the Crown have emanated from the Crown by grant of kings.)

Libertatibus allocandis, a writ lying for a citizen or burgess, impleaded contrary to his liberty, to have his privilege allowed.—*Reg. Orig.* 262.

Libertatibus exigendis in itinere, an ancient writ whereby the king commanded the justices in eyre to admit of an attorney for the defence of another's liberty.—*Reg. Orig.* 19.

Liberticide, a destroyer of liberty.

Libertinum ingratum leges civiles in pristinam servitutem redigunt; sed leges Angliæ semel manumissum semper liberum judicant. Co. Litt. 137.—(The civil laws reduce an ungrateful freedman to his original slavery, but

the laws of England regard a man once manumitted as ever after free.)

Liberty, a franchise, being a royal privilege or a branch of the Crown's prerogative subsisting in the hands of a subject, as a liberty to hold pleas in a court of one's own.

The privileged districts, called liberties from being exempt from the sheriff's jurisdiction, having separate commissions of the peace, and not being incorporated boroughs, might, by Order in Council, be united with the counties in which they were situate upon petition of the justices of the liberty or of the courts, under 13 & 14 Vict. c. 105, which statute was, it is believed, but little taken advantage of. (As to election of a 'people's magistrate' in 1891, by the tenants and inhabitants of the liberty of Havering-atte-Bower, in Essex, see *Law Journal* for July 11th, 1891.)

By s. 48, subs. 1, of the Local Government Act, 1888, every liberty and franchise of a county forms for the purpose of that Act (see COUNTY COUNCIL) part of the county of which it forms part for the purposes of parliamentary elections.

Liberty of the rules, a privilege to go out of the Fleet and Marshalsea prisons within certain limits and there reside. Abolished by 5 & 6 Vict. c. 22.

Liberum tenementum, a frank tenement or freehold. The plea of *liberum tenementum*, commonly pleaded by the defendant in an action of trespass, was the only case of usual occurrence in more modern practice, in which the allegation of a general freehold title in lieu of a precise allegation of title was sufficient. It was sustained by proof of any estate of freehold, whether in fee, in tail, or for life only, and whether in possession or expectant on determination of a term of years, but it did not apply to the case of a freehold estate in remainder or reversion, expectant on a particular estate of freehold, nor to copyhold tenure.—*Stephen on Pleading*, 7th ed., 257. Obsolete; see now PLEADING.

Liblac [*veneficium*, Lat.], witchcraft, particularly that kind which consisted in the compounding and administering of drugs and philtres.—*Leg. Athel.* 6.

Liblacum, bewitching any person; also a barbarous sacrifice.—*Leg. Athel.* 6.

Libra pensa, a pound of money by weight.

It was usual in former days, not only to sell the money, but to weigh it; because many cities, lords, and bishops, having their mints, coined money, and often very bad money, too, for which reason, though the pound consisted of 20 shillings, they weighed it.—*Encyc. Lond.*

Libraries (Public). By the Public Libraries Acts, 1855—1890 (18 & 19 Vict. c. 70; 29 & 30 Vict. c. 114; 34 & 35 Vict. c. 70 47 & 48 Vict. c. 37; 50 & 51 Vict. c. 22; and 53 & 54 Vict. c. 68), free public libraries may be established in municipal boroughs, improvement act districts, and parishes, by the vote of a majority of two thirds of the inhabitants, taken by voting papers, 'and not otherwise' (Act of 1890, s. 2). The libraries when established are maintained at the expense of the ratepayers, but the rates levied in any one year must not exceed one penny in the pound. For similar provisions as to Scotland, see 30 & 31 Vict. c. 37, and 34 & 35 Vict. c. 59; and as to Ireland, 18 & 19 Vict. c. 40, and 40 & 41 Vict. c. 15.

Librata terræ, a portion of ground containing four oxgangs, and every oxgang fourteen acres.—*Cowel.*

This is the same with what in Scotland was called *pound-land* of old extent.

Libripens, a scalesman.—*Civ. Law.*

License or **Licence** [fr. *licentia*, Lat.], a grant of permission, a power of authority given to another to do some lawful act. It may be either written or verbal; when written, the paper containing the authority is called a license.

A license is necessary before doing many acts, as to found a church, to erect a park, to marry without publication of banns, to a corporation to alien, etc., also to carry on various trades, and to practise any profession. See *Ayliffe's Parergon. Sanchez de Matrimonio: Lib. de Dispensationibus.*

As to licenses for the sale of intoxicating liquors by retail, see INTOXICATING LIQUORS.

As to music and dancing licenses, see MUSIC AND DANCING.

Licensed Victualler. The holder of the general publican's license, under the Licensing Act, 1828, 9 Geo. IV. c. 61, is the licensed victualler *par excellence*, but the Legislature has (see s. 27 of the Licensing Act, 1872) applied the term to all persons selling any kind of intoxicating liquor under a license from the justices of the peace.

Licensee, a person to whom a license has been granted.

Licentia concordandi, that license for which the king's silver was paid on passing a fine, See FINE.

Licentia loquendi, an imparlance. See IMPARLANCE.

Licentia surgendi, license to arise, which was a liberty or space of time anciently given by the Court to a tenant to arise out of his bed, who was essoined *de malo lecti* in a real action; and it was also the writ thereupon. —*Fleta*, l. 6, c. x.

Licentia transfretandi, a writ or warrant credited to the keeper of the port of Dover,

or other seaport, commanding him to let such persons pass over sea as have obtained the royal license thereunto.—*Reg. Orig.* 193.

Licentiate, one who has license to practise any art or faculty.

Licet [Lat.], it is lawful; although.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Bacon.—(Although a disposition of a future interest is void, yet a precedent declaration can be made, which, a new Act intervening, may have an effect.)

Licet sæpius requisitus [Lat.] (*although often requested*).

Licita bene miscentur, formula nisi juris obstet. Bacon.—(Things permitted are properly joined, unless the form of law oppose.)

Licitation [fr. *liceo*, Lat., to set a price for sale], the act of exposing to sale to the highest bidder.—*Encyc. Lond.*

Licking of thumbs, a form by which bargains were complete. Obsolete.

Lidford law, a sort of Lynch law, whereby a person was first punished and then tried.

Liege [fr. *lige*, Fr.; *ligio*, Ital.], bound by some feudal tenure; a subject.

Liege homage, an acknowledgment which included fealty and the services consequent upon it.—1 *Br. & Had. Com.* 442.

Liege-lord, a sovereign; superior lord.

Liegeman, he that oweth allegiance.—*Cowel.*

Liege poustie [*legitima potestate*], a state of health which gave a person lawful power in Scotland to dispose of his heritable property either *mortis causâ* or otherwise. But the Scotch Law of Deathbed has now been abolished by 34 & 35 Vict. c. 81, which enacts that no deed, instrument, or writing made by any person who shall die after the passing of that Act shall be liable to challenge or reduction *ex capite lecti.*

Lieger, or **Leger**, a resident ambassador.

Lieges, or **Liege people**. See LIEGE.

Lien [answering to the *tacita hypotheca* of the Civil Law], a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied. It is neither a *jus in re*, nor a *jus ad rem*, i.e., it is not a right of property in the thing itself, or right of action to the thing itself.

It is either *particular*, as a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing; or *general*, as a right to retain a thing not only for such charges or claims, but also for a general balance of accounts between the parties in respect to other dealings of the like nature.

Particular liens may arise in various ways: (1) by an express contract; (2) by an implied contract, resulting from the usage of trade, or the manner of dealing between parties; (3) by mere operation of law from the relation and acts of the parties, independently of any contract. General liens, not being favoured in law, must be maintained upon one of the two first grounds.

The civil law derived its own liens, whether they were pledges or hypothecations, or simple privileges, from similar sources.

The following is an analysis of the mode in which the law on this subject has been treated. (1) As to the manner and circumstances under which a lien may be acquired. To create a valid lien it is essential that the person through whom it is acquired should himself either have the absolute ownership of the property, or at least a right to vest it; for *nemo plus juris ad alium transferre potest, quam ipse habet.* There must also be an actual or constructive possession by the party asserting it, with the express or implied assent of the party against whom it is asserted. It must not be inconsistent with the express terms, or the clear intent, of the contract.

(2) The proper debts or claims to which a lien properly attaches. It attaches only to certain and liquidated demands, and not to those which sound only in damages, and can be ascertained only through the intervention of a jury, unless, indeed, a special contract exists. The debt or demand for which the lien is asserted, must be due to the person claiming it in his own right, and not merely as the agent of a third person. It must also, in the absence of a special agreement, be a debt or demand due from the person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him.

(3) How a lien may be waived or lost. It may be waived by any act or agreement between the parties, by which it is surrendered, or becomes inapplicable. A voluntary parting with the possession of the goods, will amount to a waiver or a surrender of a lien: for as it is a right founded upon possession, it must ordinarily determine when the possession ceases. There are exceptions in favour of trade, as that of a factor.—*Cowp. R.* 251. But the lien may revive and re-attach, upon the property coming again into the possession of the person entitled to the lien, if it so come as the property of the same owner against whom his right exists, and no new intermediate equities have affected that right.

A lien is not lost when the demand in respect of which it was acquired can no longer be enforced by an action, on account of the

Statute of Limitations, for the statute does not put an end to the debt, but only to the remedy by action.

(4) In what manner a lien may be enforced. There is, it seems, but a mere right of retainer, which may be used as a defence to an action for the recovery of the property, or as a matter of title or special property, to reclaim the property, by action, if he have been unlawfully dispossessed of it. Sometimes a court of equity has decreed a sale as a part of its own system of remedial justice; and courts of admiralty have been constantly in the habit of decreeing a sale to satisfy maritime liens, such as bottomry-bonds, seamen's wages, repairs of foreign ships, salvage, and other claims of a kindred nature. The owner has a perfect right to dispose of the property, subject to the lien, and the person to whom he conveys it will have a perfect title to it upon discharging the lien. Consult *Smith's Merc. Law.*

The doctrine of a vendor's equitable lien for unpaid purchase-money is thus stated by Lord Eldon (*Mackreth* v. *Symmons*, 15 *Ves.* 329 (1808), and 1 *White and Tudor's Lead. Cas.* :—'Where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt endorsed upon the back, if it is the simple case of a conveyance, the money, or part of it, not being paid as between the vendor and the vendee, and persons claiming as volunteers upon the doctrine of this court, which, when it is settled, has the effect of a contract, though perhaps no actual contract has taken place, a lien shall prevail; in the one case, for the whole consideration; in the other, for that part of the money which was not paid.'

By the Judicature Act, 1873, s. 34, causes for the sale and distribution of the proceeds of any property, subject to lien, are assigned to the Chancery Division of the High Court.

In the Scottish law, the doctrine of lien is known by the name of *retention*, and that of set-off by the name of *compensation*.

Lien of a covenant. The commencement of a covenant stating the names of the covenantors and covenantees, and the character of the covenant, whether joint or several.

Lieu [Fr.], place, room; it is only used with *in*; *in lieu*, instead of.—*Encyc. Lond.*

Lieu conus, a castle, manor, or other notorious place, well known, and generally taken notice of by those who dwell about it.—2 *Lil. Abr.* 641.

Lieutenancy, Commission of. See COMMISSION OF ARRAY.

Lieutenant [fr. *lieu*, Fr., a place, and *tenant*, holding], a deputy; *locum tenens*; one who acts by vicarious authority.

Life annuity, an annual payment during the continuance of any given life or lives. See ANNUITY.

Life assurance, a transaction whereby a sum of money is secured to be paid upon the death of the person whose life is assured, or upon the failure of one out of two or more joint lives. See INSURANCE.

Life-estate, an estate for (1) one's own life, or (2) the life of another—*pur autre vie.*

Life-land, or **Life-hold**, land held on a lease for lives. See LIVES.

Life-peerage. Letters-patent, conferring the dignity of baron for life only, do not enable the grantee to sit and vote in the House of Lords, not even with the usual writ of summons to the house.—*Resolution of the Committee for Privileges*, 22nd February, 1856. But see LORD OF APPEAL IN ORDINARY.

Life-rent, a rent received for a term of life.

Ligan [fr. *lier*, Fr., to tie], a wreck consisting of goods sunk in the sea, but tied to a cork or buoy, in order that they may be found again.—5 *Rep.* 106.

Ligeance, the true and faithful obedience of a subject to his sovereign; also the dominion and territory of a liege lord.

Ligeantia est quasi legis essentia; est vinculum fidei. Co. Litt. 129.—(Allegiance is, as it were, the essence of law; it is the chain of faith.)

Ligeantia naturalis nullis claustris coercetur, nullis metis refrœnatur, nullis finibus premitur. 7 Co. 10.—(Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits.)

Ligeas, a liege.—*Old Records.*

Light, a right to have the access of the sun's rays to one's windows free from any obstruction. An uninterrupted enjoyment of light for twenty years constitutes, in every case, an absolute and indefeasible right to it, unless it shall appear that the enjoyment took place under some deed or written consent or agreement.—2 *Wm. IV.* c. 71. See *Gale on Easements*; *Goddard on Easements.*

Lighthouse, a high building, at the top of which lights are shown to guide ships at sea. The power of erecting and maintaining them is a branch of the royal prerogative. The management of lighthouses is now regulated by 17 & 18 Vict. c. 104, Part VI., ss. 339—416, and subject to the rights of persons having authority over local lighthouses, is invested in the following bodies:—

(1) As to lighthouses in England, Wales, Jersey, Guernsey, Sark, and Alderney, and the adjacent seas and islands, and in Gibraltar, in the Trinity House.

(2) In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses.

(3) In Ireland and the adjacent seas and islands, in the Dublin Corporation.

The statute also provides for the levy of light dues, the construction and dues of new light-houses, the surrender of local light-houses, damage to lights, etc., and the prevention of false lights. See also 25 & 26 Vict. c. 63, s. 43 *et seq.* By 17 & 18 Vict. c. 120, several statutes relating to light-houses are repealed. As to colonial light-houses, see 18 & 19 Vict. c. 91.

Lighting and Watching Act, 3 & 4 Wm. IV. c. 90, superseding 2 Geo. IV. c. 27. An Act which may be adopted in any parish by the votes of a majority of two-thirds of the ratepayers, and which, if adopted, regulates the lighting of the parish 'by gas, oil, or otherwise' (s. 45), and the appointment, employment, and dismissal of 'watchmen' or constables therein. The Act may be abandoned in three years after its adoption (s. 15).

The Act was repealed as to the metropolis by 28 & 29 Vict. c. 90, s. 35, and is superseded by the Public Health Act in districts where that Act is in force (see 38 & 39 Vict. c. 55, s. 163).

Ligius, a person bound to another by a solemn tie or engagement; now used to express the relation of a subject to his sovereign.

Lignagium, a right of cutting fuel in woods; also a tribute or payment due for the same. —*Jacob.*

Lignamina, timber fit for building.—*Du Fresne.*

Ligula, a copy or transcript of a court-roll or deed.—*Cowel.*

Liguritor, a flatterer; perhaps a glutton.—*Somner.*

Limitation, restriction or circumspection; settling an estate or property; a certain time allowed by a statute for litigation. See next title.

Limitation of Actions. By various statutes, of which the first was 21 Jac. I. c. 16, and the principal succeeding ones 3 & 4 Wm. IV. cc. 27 & 42, and the Real Property Limitation Act, 1874, certain periods are fixed within which, upon the principle *Interest reipublicæ ut sit finis litium*, particular actions must be brought or proceedings taken.

The principal reasons for the introduction of these statutes have been; *first*, as regards *real property*, after upwards of *forty* years' adverse possession, or even a shorter time, a person should, upon every principle of justice, *except in the case of fraud*, be quieted and rendered secure in his possession; for, although his right, if tried within a reasonable time after his obtaining possession, might have been proved by documents and evidence, such evidence, after so great a lapse of time, may have become altogether lost; besides, a new succession of persons may have become the occupiers, by descent, or devise, or by alienation, and it would be unjust to require them to prove their title, impeached by a claimant who has slept so long on his legal rights, and who would sustain no just disappointment by being deprived of the means of pursuing so stale a demand; *second*, as regards claims of a *personal* nature, as for supposed *debts* or *damages*, the lapse of *six* years induces a presumption (upon which 21 Jac. I. c. 16 was founded) that the claim has been satisfied, and that the receipt or evidence, showing its satisfaction, has been lost, or that the claim has been too weak to prosecute, or perhaps not worth it; *third*, as to *assaults* and *batteries*, and *verbal slander*, proof of which usually depends upon doubtful and conflicting parol evidence, injured parties slumbering upon such wrongs for years cannot be favoured objects of the courts, since length of time tends to obliterate the injurious effects arising from such evanescent causes; and *fourth*, as to *justices*, *public officers*, and *individuals* acting under particular powers, inasmuch as their duties are arduous and sometimes perilous, and the construction of the statutes under which they act is frequently exceedingly nice and difficult, they should be specially protected from actions frequently arising from errors in judgment being long kept hanging over their heads, until, perhaps, all evidence in support of their defence may have been lost.

No *verbal* acknowledgment of a debt is sufficient to prevent the operation of the statutes (*Benest* v. *Pipon*, *Knapp's Rep.* 60). By 9 Geo. IV. c. 14, s. 1, in actions of debt, or on the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of 21 Jac. I. c. 16, unless such acknowledgment or promise be contained in some writing, to be signed by the party to be chargeable thereby; or by his agent duly authorised (19 & 20 Vict. c. 97, s. 13); and where there are two or more joint-contractors, no such joint-contractor shall be chargeable in respect only of the written acknowledgment of the other. By 19 & 20 Vict. c. 97, s. 14, where there are two or more co-contractors, or co-debtors, none of them shall lose the benefit of the limitation, by reason only of payment of any principal or interest by any of the others.

By the Real Property Limitation Act, 1874,

s. 3, persons who, at the time their right to recover land, etc., first accrues, are under the disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, are allowed six years from the termination of their disability, and their representatives the same time from their death.

An allowance for 'absence beyond seas,' which formerly obtained, is excluded by s. 4 of that Act, as to real property, and by s. 10 of the Mercantile Law Amendment Act, 1856, 19 & 20 Vict. c. 27, as to other matters.

As to real property, there are four general rules when the possession is not *adverse*, viz.:—1st, when both parties claim under the *same* title; 2ndly, when the *possession* of the one is *consistent* with the title of the other; 3rdly, when the claimant or his successor has never, in contemplation of law, been out of possession; and 4thly, when the occupier has acknowledged the plaintiff's title.

In equity, the rule has been, that, although the statute 21 Jac. I. c. 16, s. 3, and other Acts, do not mention suits in equity, yet that Courts of Equity in giving effect to equitable claims, and affording equitable relief, will observe the principles of these enactments, in cases where the legal and equitable titles to demands correspond, and differ only in the Court where the right happens to be enforced (*Stackhouse* v. *Burnston*, 10 *Ves.* 66, 67). The 3 & 4 Wm. IV. c. 27 expressly enacts, that no suit in equity shall be brought after the time in which the plaintiff, if entitled at law, might have brought an action (s. 24).

Trustees are expressly empowered to plead statutes of limitation by the Trustee Act, 1888, s. 8.

By the Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57, which did not come into operation until the 1st January, 1879, the period within which actions for the recovery of land may be brought was shortened, in the case of recovery of land or rent-charge, from 20 to 12 years.

No advantage can be taken of the statutes of limitation in an action unless an issue thereon be raised by the pleadings.—*R. S. C.* 1883, *Ord. XIX.*, r. 15.

As to renewal of writs to save statutes of limitations, see RENEWAL OF WRITS.

TABLE OF PRINCIPAL PERIODS OF LIMITATION.

The following is an alphabetical arrangement of the periods fixed by the principal Statutes of Limitation. It must, however, be remembered that many of the names of Actions are no longer technical, though in substance the actions will still lie:—

PROCEEDING.	PERIOD.	STATUTE.
Assault, battery, wounding, or false imprisonment.	4 years	21 Jac. I. c. 16, s. 3.
Assumpsit or promises, action of .	6 years	21 Jac. I. c. 16, s. 3.
Award, action of debt upon, where the submission was not by specialty	6 years	3 & 4 Wm. IV. c. 42, ss. 3—7.
—, but if on specialty . . .	20 years	*Ibid.*
Bill of Exchange, or Promissory Note, payable at a certain period after date.	Within 6 years after it falls due.	2 Jac. I. c. 16.
Bond of specialty	20 years	3 & 4 Wm. IV. c. 42, s. 3.
Case (except for words actionable in themselves).	6 years	21 Jac. I. c. 16, s. 3, and 3 & 4 Anne c. 9, s. 2.
Copyright, action for infringement of.	12 calendar months after accruing of cause of action	5 & 6 Vict. c. 45. s. 26.
Covenant, action of	20 years	3 & 4 Wm. IV. c. 42, s. 3.
Crown, the, suits by, relating to land.	60 years next before suit or claim.	9 Geo. III. c. 16; 24 & 25 Vict. c. 62.
Debt (if not on specialty) . .	6 years	21 Jac. I. c. 16, s. 3.
— on specialty. See BOND . .	20 years	3 & 4 Wm. IV. c. 42, s. 3.
Detinue	6 years	21 Jac. I. c. 16, s. 3.

PROCEEDING.	PERIOD.	STATUTE.
Distress for rent-charge . .	12 years	Real Property Limitation Act, 1874, s. 1.
—for other rents	6 years	3 & 4 Wm. IV. c. 27, s. 42.
Ejectment. See REAL PROPERTY.		
Intestate's personal estate. SEE PERSONAL ESTATE.		
Justices of the peace, actions against	6 calendar months . .	11 & 12 Vict. c. 44, s. 8; and see s. 2.
Land, right of entry for the recovery of.	12 years	Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57.
Legacies	20 years	*Ibid.*, s. 40.
Libels	6 years	21 Jac. I. c. 16, s. 3.
Local Authorities, acting under Public Health Act, 1875, Actions against	6 months	38 & 39 Vict. c. 55, s. 264.
Mistake, equitable relief from .	6 years after its discovery.	In analogy to 21 Jac. I. c. 16.
	Its payment for 30 years next before must be proved.	2 & 3 Wm. IV. c. 100.
Mortgage, money secured by, recovery of	12 years	Real Property Limitation Act, 1874, s. 8.
Mortgage, redeeming a . .	12 years from mortgagee taking possession, or from the last written acknowledgment, or part payment of principal or interest.	Real Property Limitation Act, 1874, s. 8.
Mortgaged lands, action to recover	Within 12 years *next after* the *last* payment of any part of the principal money or interest.	*Ibid.*
Penal actions	2 years when forfeiture goes to Crown; 1 year when it goes to Crown and prosecutor; and, in default, then 2 years by Crown, 2 years by party grieved.	31 Eliz. c. 5, s. 5, and 3 & 4 Wm. IV. c. 42, s. 3.
—Against Corporate officers for acting without being qualified, etc.	3 calendar months . .	Municipal Corporations Act, 1882, s. 24.
—Against any person for act done in pursuance of Municipal Corporation Act, 1882, or non-execution of that Act.	6 calendar months . .	*Ibid.*, s. 226.
Personal estate of intestate, suit to recover from legal personal representative.	20 years after accruing of right the last accounting, payment, or acknowledgment in writing.	23 & 24 Vict. c. 38, s. 13.
Promissory note. See BILL OF EXCHANGE.		

PROCEEDING.	PERIOD.	STATUTE.
Public Health Act, 1875, Actions against persons acting under.	6 months	38 & 39 Vict. c. 55, s. 264.
Real property, action to recover.	12 years after right accrued, *vide supra.*	Real Property Limitation Act, 1874.
Rent, by lease by deed . . .	20 years	3 & 4 Wm. IV. c. 42, s. 3.
— by written or oral do. . .	6 years	3 & 4 Wm. IV. c. 27, s. 42.
— charge proceeding for, though secured by deed.	20 years	3 & 4 Wm. IV. c. 42, s. 3.
Replevin	6 years	21 Jac. I. c. 16, s. 3.
Seduction	6 years.	21 Jac. I. c. 16, s. 3.
Slander, verbal (unless special damage).	2 years	*Ibid.*
Trespass *except* assault, battery, wounding, or false imprisonment).	6 years	21 Jac. I. c. 16, s. 3.
Trover	6 years	*Ibid.*

There is no period of limitation for prosecution of criminal offences generally, except where they are punishable on summary conviction, in which cases the period is six months, by 11 & 12 Vict. c. 48, and there is no period of limitation for proceedings to claim a peerage before the Committee of Privilege of the House of Lords.

It was provided by the Judicature Act, 1873, s. 25 (2), that no claim of *cestui que trust* against trustee for any property held on any express trust or in respect of any breach of such trust, should be held to be barred by any statute of limitations. But see s. 8 of the Trustee Act, 1888, *supra.*

As to the limitation of the time during which a writ of summons remains in force, see SUMMONS, WRIT OF.

Consult *Darly and Bosanquet* or *Banning on the Statutes of Limitation*; and see *Chitty's Statutes*, vol. iv., tit. '*Limitation of Actions.*'

Limitation of Estate, a modification or settlement of an estate determining how long it shall continue, or a qualification of a preceding estate.—1 *Inst.* 204, 234.

Limitation, Words of, those which operate by reference to, or in connection with, other words, and extend or modify an estate given by such other words, as 'heirs,' 'heirs of the body.' See 1 *Smith's Real and Pers. Prop.*, 4th ed., 63—65, 160.

Limited administration, a special and temporary administration of certain specific effects of a testator or intestate granted under varying circumstances. See 1 *Wms. Exors.*, 8th ed., 486 *et seq.*

Limited executor, an executor whose appointment is qualified by limitations as to the time or place wherein, or the subject-matter whereon, the office is to be exercised; as distinguished from one whose appointment is absolute, i.e., certain and immediate, without any restriction in regard to the testator's effects or limitation in point of time.—1 *Wms. Exors.*, 8th ed., 253 *et seq.*

Limited Liability. At Common Law every person is liable, upon his contracts, etc., up to the whole amount of his estate, and every partner is so liable upon all the contracts, etc., of the partnership. So extensive a liability being apt to prevent persons from engaging in business as partners, the statutes authorising the construction of railways, etc., have always limited the liability of each shareholder to the amount of the shares held by him. Similar limitations, extending in some cases to double the amount of shares held, have also long been found (though not universally) in the charters of incorporated banks and insurance companies. In 1855 the Act 19 & 20 Vict. c. 47, first brought these limitations into common and popular use, and the Companies Act, 1862, while providing for unlimited, expressly provides for limited liability, it being left to promoters to decide on which of the two principles they will bring out their company. Except in the case of banking companies, unlimited liability has always been uncommon, and even in the case of banking and other companies which have been registered as unlimited, the Companies Act, 1879, 42 & 43 Vict. c. 76,—the passing of which was suggested by the failure of the Glasgow Bank, an unlimited company,

—provides for a registration anew with limited liability. Almost all the principal banking companies have taken advantage of this Act, which, however, continues the unlimited liability of a bank of issue in respect of its notes.

The liability of shipowners is limited by s. 54 of the Merchant Shipping Act, 1862, and of railway companies in respect of the carriage of certain animals by s. 7 of the railway and Canal Traffic Act, 1854.

Limited Owner. A tenant for life, in tail or by the curtesy, or other person not having a fee-simple in his absolute disposition. See Settled Land Act, 1882, s. 58, and SETTLED LAND.

Limited Owners' Residences Act (33 & 34 Vict. c. 56). This Act, as amended by the 'Limited Owners' Residences Act, 1870, Amendment Act, 1871' (34 & 35 Vict. c. 84), enables the tenant for life of a settled estate to charge the estate with the expense of building a mansion house.

Limogia, enamel.—*Du Cange.*

Linarium, a flax plat, where flax is grown. —*Du Cange.*

Lincoln's Inn, an Inn of Court. See INNS OF COURT.

Lindesfern, or **Lindesfarne**, Holy Island, in Northumberland, which was formerly a bishop's see.—4 *Inst.* 288.

Line, succession of relations (see INHERITANCE); boundary; the twelfth part of an inch.

Linea recta est index sui et obliqui; lex est linea recti. Co. Litt. 158.—(A right line is a test of itself, and of an oblique; law is a line of right.)

Linea recta semper præfertur transversali. Co. Litt. 10.—(The right line is always preferred to the collateral.)

Lineage [fr. *lignage*, Fr.], race, progeny, family, ascending or descending.

Lineal consanguinity, that relationship which subsists between persons descended in a right line, as grandfather, father, son, grandson.

Lineal descent, the descent of an estate from ancestor to heir in a right line.

Lineal warranty, where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father or an elder son in the life of the father released to the disseisor of themselves, or of the grandfather, with warranty, this was lineal to the younger son.—*Litt.* s. 703. Abolished by 3 & 4 Wm. IV. c. 74, s. 14.

Liquidated damages, the amount agreed upon by a party to a contract to be paid as compensation for the breach of it, and intended to be recovered, whether the actual damages sustained by the breach be more or less, in contradistinction to a penalty, which is only the maximum amount agreed to be paid, and is intended to be reducible in proportion to the actual damage sustained. See *Kemble* v. *Farren*, 6 *Bing.* 141; *Lord Elphinstone app.* v. *Monkland Iron Co., resps.*, 11 *App. Cas.* 332.

Liquidated demand, where an action is brought for the recovery of a liquidated sum the writ of summons may be specially endorsed, as to which see the title LEAVE TO DEFEND.

Liquidation. As to liquidation by arrangement with creditors, see the repealed Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, s. 125; but the procedure was not re-established by the Bankruptcy Act, 1883. As to liquidation under the Joint Stock Companies Act, see JOINT STOCK COMPANY. The Liquidation Act, 1868 (31 & 32 Vict. c. 68), provided for the distribution of assets, without a sale, in certain cases.

Lis [Lat.], a suit, action, controversy, or dispute.

Lis mota (*the dispute having arisen*). Declarations of deceased members of a family, in matters of pedigree, are inadmissible in evidence, if made after a controversy has arisen as to the facts on which the claim is founded (or, as it is called, *post litem motam*), which for that purpose is to be deemed the commencement of the *lis mota.*—6 *C. & P.* 560; *Taylor on Evidence*, s. 564 *et seq.*; *Shedden* v. *The Attorney-General*, 30 *L. J.* (*P. M. & A.*) 232.

Lis pendens (*a pending suit*). The pendency of another action between the same parties for the same cause of action might, under the former practice, have been pleaded in abatement, though not in bar; but the pendency of an action in an inferior or foreign court could not be so pleaded. Such matter may now be set up by way of defence, or the action may be stayed by the Court, under the Judicature Act, 1873, s. 24 (5).

The actual pendency of a suit in equity was regarded as notice of the suit to all the world, though after a complete decision the public attention may be supposed to be drawn off to other matters, and therefore a person was allowed to be ignorant of a final decree of the Court made in a cause in which he was not concerned. But by 2 Vict. c. 11, s. 7, it was enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name of the usual or last known place of abode, and the title, trade, or profession of the person whose estate

is intended to be affected thereby, and the Court of Equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the Court of Common Pleas, who shall forthwith enter the same particulars in a book, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and the provisions contained in the Act in regard to the re-entering of judgments every five years, shall extend to every case of *lis pendens*, which shall be registered under the provisions of the Act. See 18 Vict. c. 15, and 15 & 16 Vict. c. 16, s. 46. A special case in Chancery is a *lis pendens*, 13 & 14 Vict. c. 35, s. 17. As to entering satisfaction as to pending suit, etc., see 23 & 24 Vict. c. 115, s. 2, and 30 & 31 Vict. c. 47, s. 2.

Lit de justice. See Bed of Justice.

Literæ Humaniores, Greek, Latin, general philology, logic, moral philosophy, metaphysics; the name of the principal course of study in the University of Oxford.

Literæ patentes regis non erunt vacuæ. 1 Buls. 6.—(The King's letters patent shall not be void.)

Literæ scriptæ manent. Written words last.

Literal contract, a written agreement subscribed by the contracting parties.—*Civ. Law.* See *Colq. Rom. Civ. Law*, 1623 *et seq.*

Literal proof, written evidence.—*Ibid.*

Literary property. See Copyright.

Literary and Scientific Institutions Act (1854), 17 & 18 Vict. c. 112, which affords greater facilities for procuring and settling sites and buildings in trust for institutions established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, and makes provisions for improving the legal conditions of such institutions. As to their exemption from poor-rates, see 6 & 7 Vict. c. 36.

Literate, one who qualifies himself for holy orders by presenting himself as a person accomplished in classical learning, etc., not as a graduate of Oxford, Cambridge, etc.

Literatura. *Ad literaturam ponere* means to put children to school. This liberty was anciently denied to those parents who were servile tenants, without the lord's consent: the prohibition against the education of sons arose from the fear that the sons, being bred to letters, might enter into holy orders, and so stop or divert the services which he might otherwise do as heir to his father.—*Paroch. Antiq.* 401.

Lithographs, Copyright in. See 15 & 16 Vict. c. 12, s. 14. See Copyright.

Litigant, one engaged in a law-suit.

Litigation, judicial contest; law-suit.

Litigious church, where two presentations to a church are offered to the bishop upon the same avoidance.—*Jenk. Cent.* 11.

Litis æstimatio, the measure of damages.

Litis contestatio, in the Ecclesiastical Courts the issue of an action. (2) A submission to the decision of a judex.—*Civ. Law.*

Litis nomen omnem actionem significat, sive in rem, sive in personam sit. Co. Litt. 292. —(A law-suit signifies every action, whether it be *in rem* or *in personam.*)

Litispendence [fr. *lis*, Lat., strife, and *pendeo*, to hang], the time during which a law-suit is going on. Obsolete.

Little Goes, a species of lottery, declared unlawful.—42 *Geo. III.* c. 119.

Littleton, a judge of the Common Pleas in the reign of Edward IV., who composed a book of tenures for the use of his son, to whom it is addressed. It contains three books: the first upon estates; the second upon tenures and services, which two were designed to explain more at large the principal subject of the old book of tenures; the third discourses of several incidents and consequences of tenures and estates.

The undiminished reputation which this author still possesses is owing principally to the choice of his subject. The law of tenures and estates, as understood in the time of Littleton, is at this day the best introduction to the knowledge of real property; and though great part of this volume is not now law, yet so intimately was the whole of that system connected, that what remains of tenures cannot be understood without a knowledge of what is abolished, and, therefore, the parts of Littleton which are now obsolete are studied both with profit and pleasure. Sir Edward Coke has furnished the world with a very copious and minute commentary on this book, in which he has carried his attention to the import of every word so far as to make interesting remarks on his very *et cæteras.*—4 *Reeves*, c. 25, p. 113.

Liturgy [fr. λειτουργία, Gk., a public service], the Book of Common Prayer used in the Established Church, as confirmed by 13 & 14 Car. II. c. 4.

The 34 & 35 Vict. c. 37, passed 'to amend the law relating to the Tables of Lessons and Psalter contained in the Prayer-Book,' provides a new Table of Lessons. The 35 & 36 Vict. c. 35, provides 'a shortened form of Morning and Evening Prayer.' See Act of Uniformity.

Livelode, maintenance, support.

Livery [fr. *livrer*, Fr.], the act of giving or taking possession, now abolished by 7 & 8 Vict. c. 76, and 8 & 9 Vict. c. 106; release from

wardship; also the writ by which possession was obtained; also, simply delivery, as a horse is said to stand at livery where the livery stable keeper delivers him to the owner for use as required. In London, the collective body of liverymen. Also, the privilege of a particular company or society. See SEISIN.

Livery-man, a member of some company in the City of London; also called a freeman.

Livery-office, an office appointed for the delivery of lands.

Livings in Commendam. See COMMENDA.

L. J. Lord Justice of Appeal, which see.

Lloyd's Bonds. Instruments under the seal of a railway company, admitting the indebtedness of the company to a specified amount to the obligee, with a covenant to pay him such amount with interest on a future day. So called from the name of the counsel who originally settled such a bond. All such 'loan notes' issued otherwise than under the authority of some statute are invalid, and by 7 & 8 Vict. c. 85, s. 17, the railway company issuing them forfeits to the Crown a sum equal to the sum for which any note purports to be a security.

Load-line, a line painted on the sides of a ship to show how far up the sides the water will rise when the ship is loaded. The Merchant Shipping Act, 1890, 53 Vict. c. 9, substitutes a 'maximum load-line in salt water, to which *it shall be lawful* to load a ship,' i.e., a compulsory load-line, for a load-line indicating a point beyond which the owner intended that it should not be loaded, as prescribed by the Merchant Shipping Act, 1876, i.e., an optional load-line. See UNSEAWORTHY SHIPS.

Loadmanage, the pay to a pilot for conducting a ship from one place to another.—*Cowel.*

Loan [*hlæn*, Sax.], anything lent or given to another on condition of return or repayment. A sum of money confided to another.

Loan, gratuitous, Commodate, a class of bailment which is called *commodatum* in the Roman law, and is denominated by Sir William Jones a *loan for use* (*prêt à usage*), to distinguish it from *mutuum*, a loan for consumption. It is the gratuitous lending of an article to the borrower for his own use.

Several things are essential to constitute this contract. (1) There must be a loan of either goods or chattels, in contradistinction to a sale or deposit of a thing with another for the sole benefit or purposes of the owner. (2) It must be lent gratuitously. (3) It must be lent for the use of the borrower, which must be the principal object, and not merely accessorial. (4) The property must be lent to be specifically returned by the lender at the determination of the bailment: and in this respect it differs from a *mutuum* or loan for consumption, where the thing borrowed, such as corn, wine, oil, or money, is to be returned in kind.

The borrower has the right to use the thing during the time and for the purpose agreed upon by the parties. The loan is to be considered as strictly personal, unless from other circumstances a different intention may fairly be presumed. The borrower must take proper care of the thing borrowed, use it according to the lender's intention, restore it at the proper time, and in a proper condition.

The lender must suffer the borrower to use and enjoy the thing lent during the time of the loan, according to the original intention, without any molestation or impediment, under the peril of damages. He must reimburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. He is bound to give notice to the borrower of the defects of the thing lent; and if he do not, but conceal them, and an injury occurs to the borrower thereby, the lender is responsible. Where the thing has been lost by the borrower, and, after he has paid the value thereof, is restored to the lender, the latter must return either the price paid or the thing; for, by such payment of the loss, the property is effectively transferred to the borrower.

Mr. Justice Story thus concludes his observations on gratuitous loans—a subject of daily occurrence in the actual business of human life:—'It has, however,' says he, 'furnished very little occasion for the interposition of judicial tribunals, for reasons equally honourable to the parties and to the liberal spirit of polished society. The generous confidence thus bestowed is rarely abused; and if a loss or injury unintentionally occurs, an indemnity is either promptly offered by the borrower, or compensation is promptly waived by the lender.'—*Story's Bailments*, c. iv.

Loan Commissioners. See PUBLIC WORKS LOANS ACT, 1875.

Loan Societies, institutions established for the purpose of advancing money on loan to the industrious classes, and receiving back payment for the same by instalments, with interest.

By 3 & 4 Vict. c. 110 (continued by 21 & 22 Vict. c. 19, and made perpetual by 26 & 27 Vict. c. 56), forms of proceeding of a similar nature to those prescribed in the Acts regulating savings bank and friendly societies, are requisite to enable loan societies to avail themselves of this Act; as to which see the

Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), and the title FRIENDLY SOCIETIES.

These societies are entitled to issue debentures for money deposited with them (otherwise than by way of gift), and these, as well as all other notes and instruments given in pursuance of the Act, are exempted from stamp duty. They are also placed on the same footing with savings banks, in the event of the death of a claimant intestate, who is entitled to less than 50*l.*, the production of a will or letters of administration not being requisite.

The amount which these societies may advance is 15*l.*; and no second loan can be granted until the first is repaid. The society is permitted to receive, by way of discount, at the time of the loan, interest under its enrolled rules, not exceeding 12*l.* per cent., and to receive the principal by such instalments as the rules specify, so that the first repayment shall not be sooner than the eleventh day from the time of the advance.

With respect to the recovery of loans, the Act has provided a form of note to be signed by the borrower and two sureties; and upon failure in payment, the person liable may be summoned before any justice of the peace, who may levy by distress and sale of the goods. The society (by its treasurer) may proceed against the person liable, in any County Court having jurisdiction, and where the sum due happens to exceed the amount for which the Court has jurisdiction, may recover such part of the debt as that Court can give judgment for, in lieu of the whole.

An abstract of the accounts is to be made out yearly to the 31st December, and sent during January to the proper authority, to be laid before Parliament.

Local actions, those referring to some particular locality, as actions for trespasses on land, in which the venue must have been laid in the county where the cause of action arose.

Real actions and the mixed action of ejectment were local: but personal actions were for the most part transitory, i.e., their cause of action might be supposed to take place anywhere, but when they were brought for anything in relation to realty, they were then local. See *Mostyn* v. *Fabrigas*, 1 *Smith, L. C., and* 2 *Chit. Arch. Prac.*

Local venues are abolished. See VENUE.

Local allegiance, such as is due from an alien or stranger born, so long as he continues within the sovereign's dominions and protection; it ceases the instant such stranger transfers himself from this kingdom to another. But if an alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to our enemies for purposes of hostility, he may be dealt with as a traitor.—*Fost.* 115. See ALIEN.

Local and Personal Acts of Parliament. See ACTS OF PARLIAMENT. Provisions in local and personal acts giving double and treble costs, and allowing the general issue to be pleaded, and special matter to be given in evidence, are repealed by 5 & 6 Vict. c. 97, ss. 1, 3. The same Act provides for uniformity of notice of action in such actions—one month in all cases; and equalises the periods of limitation under such Acts. See LIMITATION, STATUTES OF. By the Interpretation Act, 1889, s. 9, re-enacting 13 & 14 Vict. c. 21, every statute made after 1850 is to be taken to be a public one, and judicially noticed as such, unless the contrary be expressly declared.

Local authority. See PUBLIC HEALTH.

As to loans to such authorities and their right to issue debentures, see the Local Loans Act, 1875, 38 & 39 Vict. c. 83.

Local Board. A body of persons established by an order of the Local Government Board, upon a resolution of the owners and ratepayers of a rural district, for the purpose of administering the Public Health Act (which see) within such district, which is called a 'local government district.' They are elected by open voting of the owners and ratepayers, each voter having from one to six votes, in proportion to the property occupied by him. See s. 272, and sched. 2 of the Public Health Act, 1875.

Local Courts, tribunals of a limited and special jurisdiction, as the several County Courts throughout the country. See further BOROUGH COURTS; INFERIOR COURTS.

Local Government. That part of the government of the country which, by delegation from the Imperial Government, is conducted by bodies appointed or elected to conduct it within limited areas, as parishes, boroughs, local government districts, poor law unions, petty sessional districts, county boroughs, and counties. See these titles respectively, and COUNTY COUNCILS; DISTRICT COUNCILS.

Local Government Act, 1888, 51 & 52 Vict. c. 41, the Act establishing County Councils throughout England and Wales, passed on the 13th August, 1888, and commencing by s. 109 (except as to matters required to be done for bringing it into operation, such as the elections under it, which were held in January 1889) on 'the appointed day,' that is, on the 1st April, 1889, or such other day, earlier or later, as should be fixed by the Local Government Board; which Board, however, did *not* fix any other day.

Local Government Board. The 'Local Government Board Act, 1871' (34 & 35 Vict. c. 70), concentrating in one department of the Government 'the supervision of the laws relating to the public health, the relief of the poor, and local government,' establishes this Board, and transfers thereto all the powers of the Poor Law Board, all the powers of a Secretary of State as to registration of births, deaths, and marriages, public health, drainage, local government, etc. (as mentioned in scheduled Acts), and all powers of the Privy Council as to prevention of disease, and vaccination (as mentioned in scheduled Acts). By s. 3, the Board consisted of a President, and (as *ex-officio* members) of the President of the Privy Council, the Principal Secretaries of State for the time being, the Lord Privy Seal, and the Chancellor of the Exchequer. By the 35 & 36 Vict. c. 79, s. 36, the powers of the Secretary of State under the Highway and Turnpike Acts are also transferred to the Local Government Board. See also PUBLIC HEALTH.

A similar Board has been constituted for Ireland by 35 & 36 Vict. c. 69.

Local Government District. See LOCAL BOARD.

Local Government (Ireland) Acts. See 34 & 35 Vict. c. 109 (1871), and the Local Government Board (Ireland) Act, 1872 (35 & 36 Vict. c. 69).

Local Government of Towns, see PUBLIC HEALTH.

Local improvements. The 23 & 24 Vict. c. 30, enables a majority of two-thirds of the ratepayers of any parish or district, duly assembled, to rate their district in aid of certain public improvements for general benefit within their district. See next title.

Local Loans Act, 1875, 38 & 39 Vict. c. 83. See title PUBLIC WORKS LOANS ACT, 1875.

Local Taxation Licenses. Licenses to sell intoxicating liquors, etc., to keep dogs, guns, carriages, etc., and to trade as horse dealers, pawnbrokers, etc.; the proceeds of the duties are transferred to County Councils for their county funds by s. 20 of the Local Government Act, 1888. A full list of the licenses is given in sched. 1. of the Act.

Local taxes, those assessments which are limited to certain districts, as poor-rates, parochial taxes, county rates, etc.—7 & 8 *Vict.* c. 33. As to the recovery of local rates, see 12 & 13 Vict. c. 14; 25 & 26 Vict. c. 82; and 38 & 39 Vict. c. 55.

Locatarius, a depositee.—*Civ. Law.*

Locatio, hire, a letting-out.

Locatio-conductio, or **Hiring,** a bailment for reward or compensation. See HIRING.

Locatio custodiæ, the receiving of goods on deposit for reward.—*Civ. Law.*

Locatio mercium vehendarum, a contract for the carriage of goods for hire.—*Ibid.*

Locatio operis, the hiring of labour and services.—*Civ. Law.*

Locatio operis faciendi, the hiring of labour and services.—*Ibid.*

Locatio rei, the hiring of a thing.—*Ibid.*

Location, a contract for the temporary use of a chattel, or the service of a person, for an ascertained hire.

Locator, a letter of a thing, or services for hire.—*Civ. Law.*

Locke's Act, 23 & 24 Vict. c. 127, also called 'The Solicitors Act, 1860,' amending the law as to the admission, etc., of solicitors, etc.

Locke-King's Act, 17 & 18 Vict. c. 113 (amended by 30 & 31 Vict. c. 69, and 40 & 41 Vict. c. 34), whereby the heir or devisee of real estate was first precluded from claiming payment of a mortgage on such estate out of the personal assets of the ancestor or testator.

Lock-up houses, places for the temporary confinement of prisoners.—5 & 6 *Vict.* c. 109, s. 22 (counties); 11 & 12 *Vict.* c. 101 (borders of counties); and 31 *Vict.* c. 22 (counties and boroughs).

Lockman, an officer in the Isle of Man, to execute the orders of the governor, much like our under-sheriff.

Lococession, the act of giving place.

Locomotives. With reference to the use of locomotives containing within themselves the machinery for their own propulsion (24 & 25 Vict. c. 70, s. 1) on turnpike and other roads, and the tolls to be levied on them, and on waggons and carriages drawn by them, see 24 & 25 Vict. c. 70; 28 & 29 Vict. c. 83; and 32 & 33 Vict. c. 85.

Loculus, a coffin, a purse.—*Old Records.*

Locum tenens [Lat.], a deputy.

Locus in quo (the place in which).—1 *Salk.* 24.

Locus partitus, a division made between two towns or counties, to make trial where the land or place in question lies.—*Fleta*, l. 4, c. xv.

Locus pœnitentiæ (a place or chance of repentance), a power of drawing back from a bargain before any act has been done to confirm it in law.—*Bell's Scotch Law Dict.*

Locus pro solutione reditûs aut pecuniæ secundum conditionem dimissionis aut obligationis est strictè observandus. 4 Co. 73.—(The place for the payment of rent or money, according to the condition of a lease or bond, is to be strictly observed.)

Locus regit actum. Cited *L. R.* 1 *Q. B.* 119. The place governs the act; that is, the act is governed by the law of the place where it is done.

Locus sigilli [Lat.], abbrev. L.S., the place of the seal.

Locus standi, the right of a party to appear and be heard on the question before any tribunal, frequently disputed in private bill legislation. Consult the works of *Smethurst*, or of *Clifford and Stephens*, on this subject.

Lode-manage, or **Lode-merege**, the hire of a pilot for conducting a vessel from one place to another.—*Cowel.* See LOADMAN-AGE.

Lodger, a tenant, with the right of exclusive possession, of a part of a house, the landlord, by himself or an agent, retaining general dominion over the house itself.

Lodger-Franchise. This was first conferred upon the occupiers of lodgings in boroughs of 10*l.* yearly value, if let unfurnished, by the Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 4, and was afterwards extended to the occupiers of lodgings in counties by the Representation of the People Act, 1884, 48 Vict. c. 3, s. 2. See *Bradley* v. *Baylis*, 8 *Q. B. D.* 195.

The lodger-franchise differs from others in the necessity of being claimed every year; those lodgers, however, who have proved their claim in any year occupy in the next as 'old lodgers,' a more favourable position, and are placed on a special list called the 'Old Lodgers' List.' See Parliamentary and Municipal Registration Act, 1878, s. 22, and Registration Act, 1885, scheds. 2 & 3, Form D., No. 3.

The lodger-franchise applies to parliamentary elections only.

Lodging-Houses, Common. See the Public Health Act, 1875, ss. 76 *et seq.*, which provides for their registration and inspection, and enacts that they may be kept only by registered keepers. This Act repeals the 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41; except as to the Metropolitan Police District, and the 18 & 19 Vict. c. 121, except as to the Metropolitan District.

Lodging-houses for the Labouring Classes. See LABOURERS' DWELLINGS.

Lodgings, part of a house let.

Lodgings may be let in the same manner as lands and tenements; in general, however, they are let either by agreement in writing or by parol. An executory agreement by parol is void by the statute of frauds as being a contract in relation to land, and a written agreement is often desirable to avoid dispute.

By 34 & 35 Vict. c. 79, passed for the protection of lodgers' goods, it is provided (s. 1), that if any superior landlord shall levy a distress on any furniture, goods, or chattels of any lodger (see *Morton* v. *Palmer*, 51 *L. J. Q. B.* 7) for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, etc., so distrained, and that such furniture, etc., are the property, or in the lawful possession of such lodger; and also setting forth whether any and what rent is due from such lodger to his immediate landlord; and such lodger may pay to the superior landlord, the rent, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of such superior landlord. And by s. 3 it is provided that any payment made by any lodger pursuant to the first section of the Act, shall be deemed a valid payment on account of any rent due from him to his immediate landlord.

By 2 & 3 Vict. c. 71, s. 38, compensation may be awarded up to 15*l.* by a police magistrate, for wilful damage done by lodgers.

As to stealing by lodgers of chattels or fixtures let, to be used by them, see 24 & 25 Vict. c. 96, s. 70.

Logating, an unlawful game mentioned in 33 Hen. VIII. c. 9.

Logia, a small house, lodge, or cottage.—*Mon. Angl.*, tom. 1, p. 400.

Logium, a lodge, hovel, or outhouse.—*Old Records.*

Logomachy, a contest of words.

Lollardy [fr. *lullen*, *lollen*, or *lallen*, Old Germ., to sing with a low voice; and *hard*, from their singing funeral dirges, *Mosh.*], a vulgar term of reproach brought from Belgium and given to the early Protestants (the followers of Wycliffe) as far back as the reign of Edward III. The Lollards closely resembled the Puritans of Elizabeth's reign. —*Stow's Annals*, 425.

London, the metropolis of England. For a short account of early London, see 3 *Hallam, Mid. Ages*, p. 219.

The 'city' of London, which is not subject to the Municipal Corporations Act, is divided into twenty-six wards, over each of which there is an alderman, and is governed by a lord mayor, who is chosen yearly. As to the customs of the city, see *Pulling's Customs of London*, p. 5 *et seq.*

The customs of London as to the distribution of intestates' effects are abolished by 19 & 20 Vict. c. 94.

The administrative 'county' of London is established by the Local Government Act, 1888, s. 40, and consists of the city of London and the various metropolitan parishes in the counties of Middlesex, Surrey, and Kent, which prior to that Act were subject to the juris-

diction of the Metropolitan Board of Works, the powers of which board are transferred to the London County Council, the number of councillors consisting of double the number of parliamentary members.

The Public Health Act, 1875 (see PUBLIC HEALTH), does not apply to London, which till 1891 was governed in sanitary matters by Nuisance Removal Acts, Metropolis Management Acts, and other Acts passed either before or after that Act. In 1891 these enactments were consolidated, with amendments, by the Public Health (London) Act, 1891, 54 & 55 Vict. c. 76—a statute of 144 sections and 4 schedules, repealing more than thirty previous Acts or parts of Acts.

London Commissioners to Administer Oaths. In pursuance of 16 & 17 Vict. c. 78, s. 2, persons practising as solicitors, within ten miles from Lincoln's Inn Hall, at their respective places of business, have been from time to time appointed by the Lord Chancellor to administer oaths. See further under title COMMISSIONER FOR OATHS.

London Gazette. See GAZETTE.

London Police Act, 2 & 3 Vict. c. xciv.; and see 3 & 4 Vict. c. 84. For the later Acts, see title METROPOLITAN POLICE ACTS.

London Sessions. See CENTRAL CRIMINAL COURT.

London Sittings. See GUILDHALL SITTINGS, and ROYAL COURTS OF JUSTICE.

Long vacation. The long vacation formerly extended from the 10th of August to the 24th of October at Common Law, and to the 28th of October in Chancery in every year. By the Jud. Act, 1875, Ord. LXI., r. 2, it was provided that in the several courts and offices of the Supreme Court, the long vacation should commence on the 10th of August and terminate on the 24th of October, and the Rules of the Supreme Court 1883, were to the same effect; but by the 'Long Vacation Order,' of December 1883, it has been provided that the Long Vacation shall commence on the 13th of August, and terminate on the 23rd of October.

Loquela, an imparlance; a declaration.

Loquela sine die, a respite to an indefinite time.

Loquendum ut vulgus, sentiendum ut docti. 7 Co. 11.—(Speak as the ordinary people, think as the learned.)

Lord [fr. *hlaford, laford, lord,* Sax., of *hlaf,* a loaf of bread, and *ford,* to give, because such great men kept extraordinary houses, and fed all the poor; for which reason they were called *givers of bread*], monarch, governor, master.—*Encyc. Lond.*

Lord in gross, he who is lord, not by reason of any manor, but as the king in respect of his crown, etc. *Very lord,* is he who is immediate lord to his tenant; and *very tenant,* he who holds immediately of that lord. So that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.

Lord Chamberlain. See CHAMBERLAIN.

Lord Chancellor. See CHANCELLOR.

Lord Chief Justice, etc. See CHIEF JUSTICE, etc.

Lord High Admiral. See ADMIRALTY.

Lord High Steward. See HIGH STEWARD.

Lord Justice Clerk, the second judicial officer in Scotland. See SESSION, COURT OF.

Lord Lieutenant, the chief governor or viceroy of Ireland.

Lords Lieutenants of Counties, officers of great distinction, appointed by the Crown for the managing of the standing militia of the county, and all military matters therein. Lords Lieutenants are supposed to have been introduced about the reign of Henry VIII., for they are mentioned as known officers in the 4 & 5 Ph. & M. c. 3, though they had not been long in use; for Camden speaks of them in the time of Queen Elizabeth, as extraordinary magistrates, constituted only in times of difficulty and danger. They are generally of the principal nobility, and of the best interest in the county; they are to form the militia in case of a rebellion, etc., and march at the head of them, as the Crown shall direct. They have the power of presenting to the sovereign the names of deputy-lieutenants, who are to be selected from the best gentry in the county, and act in the absence of the Lord Lieutenant. Their jurisdiction and privileges in relation to the militia, yeomanry, and volunteers, reverted to Her Majesty by 34 & 35 Vict. c. 86, s. 6. See that Act. Subservient to the Lord Lieutenant and the deputy lieutenants are the justices of the peace, who according to the orders they receive from them are to issue warrants to the high and petty constables, etc. Lords Lieutenants are appointed for life or *quamdiu se bene gesserint.*

Lord of a manor, the grantee or owner of a manor. See COPYHOLD.

Lord Mayor's Court in London. An inferior (*Cox* v. *Mayor of London, L. R.* 2 *H. L.* 239) Court of the Queen, held before the Lord Mayor and aldermen. Its practice and procedure are amended and its powers enlarged by 20 & 21 Vict. c. 157. In this court the recorder, or, in his absence, the common serjeant, presides as judge (s. 46); and from its judgments error might have been brought in the Exchequer Chamber (s. 4). See now Judicature Act, 1873, s. 45, and Judicature

Act, 1875, Ord. LVIII., r. 1. See further INFERIOR COURTS.

Lord Ordinary. See SESSION, COURT OF.

Lord Privy Seal, before the 30 Hen. VIII., was generally an ecclesiastic; the office has since been usually conferred on temporal peers above the degree of barons. He is appointed by letters patent. The Lord Privy Seal, receiving a warrant from the signet office, issues the Privy Seal, which is an authority to the Lord Chancellor to pass the Great Seal, where the nature of the grant requires it. But the privy seals for money begin in the Treasury, whence the first warrant issues, countersigned by the Lord Treasurer. The Lord Privy Seal is a member of the Cabinet Council.—*Encyc. Lond.*

Lord and vassal. In the feudal system the grantor, who retained the dominion or ultimate property, is called the lord, and the grantee, who had only the use or possession, is called the vassal or feudatory.

Lords' Act, 32 Geo. II. c. 28, amended by 33 Geo. III. c. 5, and made perpetual by 39 Geo. III. c. 50. It was passed for the relief of insolvent debtors, but was repealed by 1 & 2 Vict. c. 110, s. 119.

Lord's Day. *Dies Dominica*, Sunday. See SUNDAY.

Lords, House of. See HOUSE OF LORDS.

Lords Justices of Appeal, the title of the ordinary Judges of the Court of Appeal, by the Jud. Act, 1877, s. 4. Prior to the Jud. Acts there were two 'Lords Justices of Appeal, in Chancery,' to whom an appeal lay from a Vice-Chancellor, by 14 & 15 Vict. c. 83.

Lords marchers, those noblemen who lived on the marches of Wales or Scotland; who in times past had their laws and power of life and death, like petty kings. Abolished by 27 Hen. VIII. c. 26, and 6 Edw. VI. c. 10. See MARCHES.

Lords of Appeal, peers having held 'high judicial office,' three of whom at least must be present to constitute a sitting of the House of Lords for judicial business.—*App. Jur. Act*, 1876.

Lords of Appeal in Ordinary, two persons having held high judicial office or practised at the bar for not less than fifteen years, appointed, with a salary of 6000*l.* a year, to aid the House of Lords and the Judicial Committee of the Privy Council in the hearing of appeals. They rank as barons for life, but sit and vote in the House of Lords during the tenure of their office only.—*App. Jur. Act*, 1876. s. 6.

Lords of Erection. On the Reformation in Scotland, the king, as proprietor of benefices, formerly held by abbots and priors, gave them out in temporal lordships to favourites, who were termed Lords of Erection.

Lords of Parliament, those who have seats in the House of Lords. During bankruptcy peers are disqualified from sitting or voting in the House of Lords.—34 & 35 *Vict.* c. 50.

Lords of regality, persons to whom rights of civil and criminal jurisdiction were given by the Crown.—*Bell's Scotch Law Dict.*

Lords spiritual, the archbishops and bishops who have seats in the House of Lords.

Lords temporal, those lay peers who have seats in the House of Lords. See HOUSE OF LORDS.

Lordship, dominion, manor, seigniory, domain; also title of honour used to a nobleman not being a duke. It is also the customary titulary appellation of the judges and some other persons in authority and office.

Lord Warden of Cinque Ports. See CINQUE PORTS.

Lost bill of Exchange, Cheque, or Promissory Note. The Bills of Exchange Act, 1882, s. 69, replacing the repealed 9 & 10 Wm. III., c. 17, s. 3, enacts that if a bill of exchange, or cheque, or note, be lost before it is overdue, 'the person who was the holder of it may apply to the drawer to give him another bill (or cheque, or note) of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill (or cheque, or note) alleged to have been lost shall be found again;' and that 'if the drawer on request as aforesaid refuses to give such duplicate bill (or cheque, or note), he may be compelled to do so.' By s. 70 of the same Act, re-enacting 17 & 18 Vict. c. 125, s. 87, 'in any action or proceeding on' a bill (or cheque, or note), the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.'

Lost Document. The ordinary rule is that a document is proved by the production of the original, but on proof that a document cannot be found after a proper search made, it may be proved by a copy or by oral evidence of its contents.

Lot, a contribution or duty. See SCOT.

Lot or **Loth**, the thirteenth dish of lead in the mines of Derbyshire, which belonged to the Crown.

Lot Meads, common meadows which are divided yearly and distributed by lot among the owners, the share of each being called a dole. See *Williams on Commons*, 90. The owner of a dole may have a freehold in the soil, or he may have only *vestura terræ*.

Lotherwite, or **Leyerwit**, a liberty or privilege to make amends for lying with a bond-woman without license. See LAIRWITE.

Lottery, a game of chance; a distribution of prizes by chance. By 10 & 11 Wm. III. c. 17, all lotteries were declared to be public nuisances, and all grants, patents, or licenses for the same to be contrary to law. But as lotteries were found a ready mode for raising money for the service of the state, they were from time to time sanctioned by Acts of Parliament passed expressly for this purpose (see 4 Geo. IV. c. 60), but by 6 Geo. IV. c. 60, they were abolished. In the case of art unions the legislature has legalised the distribution by lottery of works of art. See ART UNIONS, FOREIGN LOTTERIES, and the statutes collected in *Chitty's Statutes*, vol. vi., tit. '*Games* and *Gaming*.'

Lou le ley done chose, la ceo done remedie a vener a ceo. 2 Rol. R. 17.—(Where the law gives a right, it gives a remedy to recover).

Lourcurdus, a ram, or bell-wether.—*Cowel.*

Love day, the day on which any dispute was amicably settled between neighbours; or a day on which one neighbour helps another without hire.

Lowbote, a recompense for the death of a man killed in a tumult.—*Cowel.*

Low-water mark, that part of the sea-shore to which the waters recede when the tide is lowest.

L.S. See LOCUS SIGILLI.

Lubricum linguæ non facilè trahendum est in pœnam. Cro. Car. 117.—(A slip of the tongue ought not lightly to be subjected to punishment.)

Lucid interval. By a lucid interval is understood, in a legal sense, a temporary cessation of the insanity or a perfect restoration to reason. It differs entirely from a remission, in which there is a mere abatement of the symptoms. See per Lord Thurlow in *Attorney-General* v. *Parnther*, 3 *Bro. C. C.* 234; also *Ray's Med. Jur. of Insan.*; *Beck's Med. Jur.*; and *Browne's Med. Jur. of Insan.*

Lucri causa [Lat.] (*for the purpose of gain*).

Lucrum, a small slip or parcel of land.

Luminare, a lamp or candle set burning on the altar of any church or chapel, for the maintenance whereof lands and rent-charges were frequently given to parish churches, etc. —*Ken. Glos.*

Lunatic, a person who has lost his senses, as distinguished from an idiot (see that title) who never had any.

The consolidating Lunacy Act, 1890, 53 Vict. c. 5, came into force on the same day (May 1st, 1890) which had been appointed for the commencement of the important Lunacy Acts Amendment Act, 1889, which it repeals and re-enacts, with so much of the preceding Lunacy Acts, Lunacy Regulation Acts, and Lunatic Asylums Acts, from 1845 downwards, as had not been repealed by the Act of 1889.

The Act of 1890 thus contains the whole English statute law of Lunatics, *except* those parts of it which are contained in the Criminal Lunatics Act, 1884, the Criminal Lunatic Asylums Act, 1860, the Trial of Lunatics Act, 1883, and 39 & 40 Geo. III. c. 94 and 3 & 4 Vict. c. 54, the Idiots Act, 1885 (see IDIOTS), and the Lunacy (vacating of Seats) Act, 1886.

The main amendments introduced by the Act of 1890, in its re-enactment of the repealed Act of 1889, were:—

1. Requirement of order of judicial authority (county court judge, stipendiary magistrate, or justice of the peace) for the detention as a lunatic of any lunatic not so found by inquisition (see that title).

2. Requirement of periodical examination of all detained lunatics, except those so found, with a view to their discharge unless they be expressly certified as still lunatics.

3. The partial application of the laws of lunacy to persons not lunatics, not properly so-called, if they be incapable through mental infirmity, arising from disease or age, of managing their affairs.

4. The gradual substitution of public for private lunatic asylums.

The Act of 1890 is necessarily a very long Act, containing 12 'parts,' 342 sections, and 5 schedules, and is supplemented by the Rules in Lunacy, 1890, of the Lord Chancellor, which chiefly relate to the management of lunatics' property, and the Rules of the Lunacy Commissioners made with the approval of the Lord Chancellor, which chiefly relate to the licensing of houses for the reception of lunatics, and their proper care and treatment therein.

The Act is amended, in divers particulars, by the Lunacy Act, 1891, 54 & 55 Vict. c. 65. See *Archbold's Lunacy Acts*; *Pope on Lunacy.*

Lundress, a sterling silver penny, which was only coined in London.—*Lownd's Essay on Coins*, 17.

Lupanatrix, a bawd or strumpet.—3 *Inst.* 206.

Lupinum caput gerere, to be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it.—*Cowel.*

Lurgulary, casting any corrupt or poisonous thing into the water.

Luxury, excess and extravagance, which was formerly an offence against the public economy, but is not now punishable.—1 *Jac. I.* c. 25. See 19 & 20 Vict. c. 64, which re-

pealed the Statute of Nottingham, 10 Edw. III., stat. 3, *de cibariis utendis.*

Lych-gate, the gate into a churchyard, with a roof or awning hung on posts over it to cover the body brought for burial, when it rests underneath.

Lyef-yeld, or **Lef-silver,** a small fine paid by a customary tenant to his lord, for leave to plough or sow.—*Cowel.*

Lying by. A person who, by his presence and silence at a transaction which affects his interests, may be fairly supposed to acquiesce in it, if he afterwards propose to disturb the arrangement, is said to be prevented from doing so by reason that he has been *lying by.* See LACHES.

Lying in franchise, waifs, wrecks, estrays, and the like, which may be seized without suit or action.—3 *Steph. Com.*

Lying in grant, or **in livery.** See GRANT.

Lying-in hospitals, charities which cannot be established without a previous license from the quarter sessions: and illegitimate children born in them are not to be chargeable to the parish of their births.—13 *Geo. III.* c. 82. See 24 & 25 Vict. c. 101.

Lynches, or **Linces.** The banks between the terraces formed where a common field is on a hill-side by ploughing, so as to turn the sod downhill; also the terraces themselves. *Elphinstone, Interpretation of Deeds,* p. 592.

Lynch-law. See LIDFORD LAW.

Lyndhurst's (Lord) Act (5 & 6 Wm. IV. c. 54) renders marriages within the prohibited degrees absolutely null and void. Theretofore such marriages were voidable merely.

Lyon's Inn, an Inn of Chancery. See INNS OF CHANCERY.

Lyon King of Arms. The ancient duty of this officer was to carry public messages to foreign states, and it is still the practice of the heralds to make all royal proclamations at the Cross of Edinburgh. The officers serving under him are heralds, pursuivants, and messengers.—*Bell's Scotch Law Dict.*

In the Act of Union with Scotland, 6 Anne c. 11, there was a power (Art. 24) to Her Majesty to settle the quartering of the arms, and the rank and precedency of the Lyon King of Arms of the kingdom; but this power was not exercised by Queen Anne, nor has it been exercised by any Sovereign since.—See *Pulling's Index to Statutory Rules and Orders,* 1891, p. 147.

M.

M, the brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb. Abolished.

Maal, Mahl, Mehal, places, districts, departments; places or sources of revenue, particularly of a territorial nature; lands.—*Indian.*

Mace, a large staff, made of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer.

Mace-greff [fr. *machecarius,* Lat.], one who buys stolen goods, particularly food, knowing it to have been stolen.—*Brit.* c. xxix.

Mace-proof, secure against arrest.

Macer, a mace-bearer; an officer attending the Court of Sessions in Scotland.

Machecollare, or **Machecoulare,** to make a warlike device over a gate, or other passage like to a grate, through which scalding water or ponderous or offensive things may be cast upon the assailants.—*Co. Litt.* 5 *a.*

Machinery. As to the riotous destruction of machinery, see 24 & 25 Vict. c. 97, s. 11. As to the fencing of machinery in factories, see FACTORIES.

Mactator, a murderer.

Madhouse. See LUNATIC ASYLUMS.

Madman. See IDIOTS AND LUNATICS.

Madras, Bishopric of, established by 3 & 4 Wm. IV. c. 85; and see 5 & 6 Vict. c. 119.

Madras and Bombay Civil Fund, transferred to Secretary of State for India in Council, by 37 & 38 Vict. c. 12.

Mæc-burgh, kindred, family.

Mæg-bot, compensation for homicide paid by the perpetrator to the kinsman or family of the slain.—*Anc. Inst. Eng.*

Mære [fr. *mer.,* Sax.], famous, great, noted; as *Ælmere,* all famous.—*Gibs. Camd.*

Magic, witchcraft and sorcery. See WITCHCRAFT.

Magis de bono quam de malo lex intendit. Co. Litt. 78 b.—(The law favours a good rather than a bad construction.) Where the words used in an agreement are susceptible of two meanings, the one agreeable to, the other against the law, the former is adopted. Thus a bond conditioned 'to assign all offices,' will be construed to apply to such offices only as are assignable.—*Chitty on Contracts,* 11th ed., 78.

Magister, a master or ruler; a person who has attained to some eminent degree in science. —*Cowel.*

Magister ad facultates, an ecclesiastical officer who grants dispensations.

Magister navis (*the master of a ship*).

Magister societatis (*the manager of a partnership*).

Magistracy, the body of officers who

administer the laws; the office of a magistrate.

Magistrate, a man publicly vested with authority, a governor, an executor of the laws. (2) A paid justice of the peace. See STIPENDIARY MAGISTRATE. (3) An unpaid justice of the peace.

Magnâ assisâ eligendâ, Writ de. The first species of extraordinary trial is that of the grand assize, which was instituted by Henry II. in Parliament, by way of alternative offered to the choice of a tenant or defendant in a writ of right instead of the duel. The writ issued to the sheriff to return four knights, who were to elect and choose twelve others to be joined with them, and these formed the grand assize or great jury, which was to try the matter of right. Abolished by 3 & 4 Wm. IV. c. 27.

Magna centum, the great hundred, or six score.

Magna Charta. This Great Charter is based substantially upon the Saxon Common Law, which flourished in this kingdom until the Norman invasion consolidated the system of feudality, still the great characteristic of the principles of real property. The barons assembled at St. Edmund's Bury, in Suffolk, in the latter part of the year 1214, and there solemnly swore upon the high altar to withdraw their allegiance from the Crown, and openly rebel, unless King John confirmed by a formal charter the ancient liberties of England; and they then engaged to demand this of the sovereign in the early part of the ensuing year, arming themselves in the meantime, so as to compel John, if necessary, to confirm those liberties which had been confirmed by the charters of his predecessors, and his own solemn but disregarded oath. As the first step the barons disclaimed all allegiance to him, were formally absolved from their oaths of fidelity, and chose for their general Robert Fitz Walter, with the title of Marshal of the Army of God and of the Holy Church. After the fortress of Bedford had surrendered to them, and they were in possession of the metropolis, by private agreement with the citizens, the king sent a message to them to desire that a place and time of meeting might be fixed for the purpose of his complying with their demands. Accordingly, the famous meadow called Runingmede, or Runemede (from the Saxon word *rune*, signifying council), situated on the southwest bank of the Thames, between Staines and Windsor, in Surrey, was selected for the interview. The conferences between the king and the armed barons opened on Monday the 15th of June, and closed on Friday the 19th of June, 1215, being in the seventeenth year of his reign. After the adjustment of preliminaries, articles or heads of agreement were drawn up and sealed; these articles were then reduced to the form of a charter, to which the Great Seal of the realm was solemnly affixed, and the instrument was given by the king's hand as a confirmation of his own act, but it was not signed by him, as commonly supposed. This celebrated event in our history took place in a small island, still called Magna Charta Island, situated in the Thames, not far beyond Aukerwyke in Buckinghamshire. Many originals of the Great Charter were made, for the purpose of depositing one in every diocese. Two of these are extant in the British Museum, and it is said there are two others in existence, one in the Cathedral at Salisbury, and the other in that at Lincoln.

Magna Charta was not firmly established as the common law of the realm and the inalienable right of the subject for nearly a century after the conferences at Runingmede, during which period the country was kept in a constant state of alarm and excitement by the struggles of the barons' war, but at length this constitutional barrier against regal encroachments was finally secured to the people by its solemn confirmation by Edward I. No fewer than thirty-two Acts of Parliament were obtained from 1267 to 1416, from the sovereigns of England, for the purpose of fixing the Great Charter as the broad basis of our legislation, and the material guarantee of the freedom of political opinion, and of vindicating the right of publicly discussing and scrutinising the conduct and measures of the government of the day.

The Great Charter, as set forth in the statutes at large, is expressed to be made in the 9th year of King Henry III. (that is in 1225), and confirmed by King Edward I. in the 25th year of his reign (that is in 1297). The original is written in the Latin language, which, although not that of pure classicality that will be appreciated by the scholar, is nevertheless simple, vigorous, and unmistakable. The original Latin is printed in the statute-book in one column, and an English translation of it in another.

Magna Charta is a collection of statutes in thirty-seven chapters, which are for the most part declaratory of our ancient and cherished customs, supplying, however, many of the deficiencies of the Common Law. The 1st chapter is a confirmation of liberties in these words:—'First, we have granted to God, and by our present chapter have confirmed for us and our heirs for ever, that the Church of England shall be free and shall have all her whole rights and liberties

inviolable. We have granted also and given to all the freemen of our realm, for us and our heirs for ever, these liberties underwritten, to have and to hold them and their heirs, of us and our heirs for ever.'

The 2nd chapter relates to the relief of the Crown's tenant of full age:—'If any of our earls or barons, or any other, which holdeth of us in chief by knight's service, die, and at the time of his death his heir be of full age, and oweth to us relief, he shall have his inheritance by the old relief; that is to say, the heir or heirs of an earl, for a whole earldom, by one hundred pounds; the heir or heirs of a baron, for a whole barony, by one hundred marks; the heir or heirs of a knight, for one whole knight's fee, one hundred shillings at the most, and he that hath less shall give less, according to the old custom of the fees.'

The Great Charter only aimed at modifying the grievances of feudalism, which created the military tenure of knight's service. It was reserved for the vigorous administration of Cromwell to abolish this military tenure, which he did by intermitting the Court of Wards in 1645. So perfectly hopeless was the restoration of this oppressive system at the restoration of the second Charles, that the provision annihilating these feudal tenures, contained in the statute 12 Car. II. c. 24, simply embodied this wholesome law of the Commonwealth, and rendered it perpetual.

The statute of Charles II. did away with the effect of the four next chapters of the Great Charter. It will be only necessary, therefore, to mention their subjects:—Chapter three related to the wardship of an infant heir of an earl, baron, or knight; chapter four prohibited the guardian from wasting the lands of ward, and from destroying his tenants, a plain indication of the wretched condition of the serfs in those days; chapter five compelled such guardians to keep in repair such lands; and chapter six that such heirs should be married without disparagements, that is, should not be compelled to contract an improper or unequal marriage.

The 7th chapter concerns widows, and enacts that:—'A widow, after the death of her husband, immediately, and without any difficulty, shall have her marriage, and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before), or that if the house be a castle, and she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid, and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her a third part of all the lands of her husband which were his during coverture, except she were endowed of less at the church door. No widow shall be distrained to marry while she chooses to live single; nevertheless, she shall find surety that she shall not marry without our (the royal) license and assent (if she hold of us), nor without the assent of the lord, if she hold of another.' See DOWER.

The 8th chapter relates to Crown debts:—'We or our bailiffs shall not seize any land or rent for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefor. Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. And if they will, they shall have the lands and rents of the debtor, until they be satisfied of the debt which they before paid for him, unless the principal debtor can show himself to be acquitted against the said sureties.

This order of enforcing Crown-debts from debtors and their sureties appears to be clear and satisfactory. It is the prerogative of the Crown to claim priority for taxes and penalties before all other creditors, and to recover them by a very prompt and efficacious process, because *thesaurus regis est pacis vinculum et bellorum nervi* (the public revenue is at once the security of peace and the sinews of war).

The 9th chapter perpetuates our right of self-government, the source and bulwark of our constitutional freedom. It enacts that:—'The City of London shall have all their old liberties and customs. Moreover, we will and grant that all other cities, boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.'

The 10th chapter prohibited excessive distress for more service for a knight's fee than was due, all which has been abolished.

The 11th chapter enacts that:—'The Common Pleas shall not follow our court, but shall be holden in some place certain.' See COMMON PLEAS; ROYAL COURTS.

The 12th chapter relates to assizes, and provides that:—'Assizes or recognitions of

novel disseisin and *mortancestor*, shall not be taken but in the shires, and after this manner; we, or if we be out of this realm, our chief justicers shall send our justicers through every county once in the year, which, with the knights of the shire, shall take the said assizes in those counties; and those things that at the coming of our aforesaid justicers, being sent to take those assizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit; and those things which for difficulty of some articles cannot be determined by them, shall be referred to our justicers of the bench, and there shall be ended.'

Assizes or actions of *novel disseisin* and *mortancestor* have long been abolished, and more simple remedies established. A novel disseisin was so called to distinguish it from an ancient disseisin, and it arose in this way:—The judges in the olden time, when travelling was perilous and slow, went their circuits but once in seven years; all disseisins then or dispossessings of the lawful owners of lands which took place before the last circuits were ancient, but all disseisins since were novel. Mortancestor was an action brought against a person who had taken possession of property after the death of an ancestor, and before his heir-at-law had entered into their occupancy. This chapter of the Great Charter is interesting as showing that our circuits and the practice of reserving points of law arising on circuit, for the consideration of the Court, are a very old institution of our judicial system.

The 13th chapter relates to assizes of darrein presentment, a now abolished method of trying the right to present a priest to an ecclesiastical benefice.

The 14th chapter is directed against excessive fines, and provides that:—'A freeman shall not be amerced, i.e., fined, for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement; and a merchant likewise, saving to him his merchandise; and any other's villein than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said amerciaments shall be assessed but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced but by their peers, and after the manner of their offence. No man of the church shall be amerced after the quantity of his spiritual benefice, but after his laytenement, and after the quantity of his offence.'

A man's contenement is that which is absolutely necessary for his support and maintenance, as his tools and instruments of trade, and wainage is that that is necessary for the labourer and the farmer, for the cultivation of his land, as carts, and implements of husbandry.

The 15th and 16th chapters relate to the making of bridges and defending of riverbanks, a subject which now forms part of local law.

The 17th chapter enacts that:—'No sheriff, constable, escheator, coroner, nor any other our bailiffs, shall hold pleas of our Crown.'

Pleas of the Crown comprehend the criminal department of the law. It was ever the anxious care of our ancestors that a person accused of crime should be tried by a superior judge and a jury, and not by an inferior magistrate. It has, however, from time to time been necessary and expedient to give to justices and local magistrates jurisdiction to a limited extent in dealing with crimes and *quasi* criminal matters. This jurisdiction is of two kinds:—(1) Relating to indictable offences; and (2) relating to offences punishable summarily. As to the latter jurisdiction, the proceedings and powers of justices are regulated (except where otherwise provided by the particular statute) by the 11 & 12 Vict. c. 43. See JUSTICES.

The 18th chapter enacts that:—'If any that holdeth of us lay-fee do die, and our sheriff or bailiff do show our letters-patent of our summons for debt, which the dead man did owe to us, it shall be lawful to our sheriff or bailiff to attach and inroll all the goods and chattels of the dead, being found in the said lay-fee, to the value of the same debt, by the sight of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt, and the residue shall remain to the executors to perform the testament to the dead, and if nothing be owing unto us, all the chattels shall go to the use of the dead (saving to his wife and children their reasonable parts).'

Debts owing to the Crown take precedence of all other debts, and this appears to be perfectly fair, for it is only by the certain payment of taxes that the government of a country can be carried on. The old law which prohibited a man from willing away all his property from his wife and children has long since been abrogated, and a man can now by a valid will deprive his widow and children of any participation in the property which he may leave.

The subjects of the 19th, 20th, and 21st chapters, relating to purveyance for a castle, doing of castle ward, and taking of horses, carts, and woods for the service of the royal castles, have been rendered obsolete by the abolition of feudalism.

The 22nd chapter declares thus:—'We will not hold the lands of them that be convict of felony but one year and one day, and then those lands shall be delivered to the lords of the fee.'

The addition of the day to the year appears to have been intended to prevent any dispute about whether the year is to be calculated as inclusive or exclusive of its last day. By the 33 & 34 Vict. c. 23, escheat and forfeiture for treason or felony has now been entirely abolished.

The 23rd chapter enacts that:—'All wears from henceforth shall be utterly pulled down in the Thames and Medway, and through all England, but only by the sea-coasts.' It is obvious that wears in navigable rivers would be obstructive of free communication. See WEARS.

The 24th chapter relates to the writ called *præcipe in capite*, which has been abolished.

The 25th chapter directs that:—'One measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London; and one breadth of dyed cloth, russets, and haberjects, that is to say, two yards within the lists, and it shall be of weights as it is of measure.' See WEIGHTS AND MEASURES.

The 26th, 27th, and 28th chapters, relating to the writ of inquisition of life and member, and the old feudal tenures and wager of law, have been superseded by their abolition.

The next chapter (29) is so often quoted that it is better to give it in the original, which is as follows:—

'Nullus liber homo capiatur vel imprisonetur aut disseisiatur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis aut utlagetur aut exuletur aut aliquo modo destruatur nec super eum ibimus nec super eum mittemus *nisi per legale judicium parium suorum, vel per legem terræ. Nulli vendemus nulli negabimus aut differemus rectum vel justiciam.*'

No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but *by lawful judgment of his peers, or by the law of the land. To no man will we sell, to no man deny, to no man delay, justice or right.*

It is required by our law that the twelve jurors be unanimous in their verdict, the reason for which would appear on criminal trials to be out of compassion to the prisoner, by giving him the benefit of every doubt, in accordance with the benignant quality of mercy. The unanimity required in trials of a civil nature is said to have arisen from the now abolished punishment, to which every juror was liable, for returning an improper verdict, and as each juror might have been subjected to a conviction, it was no doubt reasonable that every one should have a power of dissenting, and not be concluded by the opinion of the others.

The 30th chapter evinces a liberal treatment of foreigners:—'All merchants (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by water, to buy and sell, without any manner of evil tolts, i.e., extortions, by the old and rightful customs, except in time of war. And if they be of a land making war against us, and such be found in our realm at the beginning of the war, they shall be attached without harm of body or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us.' See ALIENS.

The 31st, 32nd, and 33rd chapters, relating to the royal escheat, the lord's services, and the patronage of abbeys, have been entirely superseded.

The 34th chapter would appear to be harsh and uncivil; it is this:—'No man shall be taken or imprisoned upon the appeal of a woman for the death of any other than of her husband.'

Now the occasion of this restriction was that when a woman brought an appeal of death, her opponent lost his right of defending himself against her by combat, and therefore, it was limited to widows. The present constitutional mode of prosecuting for the crime of manslaughter or murder is by indictment.

The 35th chapter, relating to County Courts, sheriffs' tourns, and leets, has long since fallen into desuetude by reason of new laws upon these subjects, though the sheriffs' County Court still exists for the purpose of parliamentary elections, and the sheriffs' tourn was not expressly abolished until 1887 by the Sheriffs' Act of that year, s. 18.

The 36th chapter enacts that:—'It shall not be lawful from henceforth to any to give his land to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom it received them. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.' It is curious to trace the ingenious devices to which the ecclesiastics had recourse for the

purpose of acquiring land and accumulating wealth; to defeat these mischievous contrivances many Acts of Parliament beginning with this chapter of Magna Charta, and including the 9 Geo. II. c. 36, have been passed. This last statute imposes many restrictions upon the gifts of land to charities. See further CHARITABLE USES.

The concluding chapter of Magna Charta sets forth that its establishment was bought from the Crown, like most of our great liberties, with a fifteenth of our movable property, in consideration of which the king grants 'for us and our heirs, that neither we nor our heirs shall attempt to do anything whereby the liberties contained in this charter may be infringed or broken. And if anything should be done to the contrary, it shall be held of no force or effect.' Consult 2 *Hallam's Middle Ages*, p. 326.

Magna Charta et Charta de Forestâ sont appelés les deux grandes chartres. 2 Inst. 570. —(Magna Charta, and the Charta of the Forest, are called the two great charters.)

Magna precaria, a great or general reap-day.—*Cowel.*

Magnus portus, the town and port of Portsmouth.

Maha-gen, a banker or any great shopkeeper among the Hindoos.

Mahal [*Indian*, literally, a place], any land or public fund producing a revenue to the government of Hindostan. *Mahalaat* is the plural.

Maiden, an instrument formerly used in Scotland for beheading criminals. It consisted of a broad piece of iron about a foot square, very sharp in the lower part, and loaded above with lead. At the time of execution it was pulled up to the top of a frame about eight feet high, with a groove on each side for it to slide in. The prisoner's neck being fastened to a bar underneath, and the sign given, the maiden was let loose, and the head severed from the body. The prototype of the guillotine.

Maiden Rents, a noble paid by the tenants of some manors on their marriage. This was said to be given to the lord for his omitting the custom of *mercheta*, whereby he was to have the first night's lodging with his tenant's wife; but it seems more probably to have been a fine for license to marry a daughter.

Maignagium [fr. *maignen*, Fr.], a brasier's shop, or perhaps a house.—*Cowel.*

Maihem. See MAYHEM.

Maihematus, maimed or wounded.

Maihemium est inter crimina majora minimum, et inter minora maximum.—Co. Litt. 127.—(Mayhem is the least of great crimes, and the greatest of small.)

Maihemium est membri mutilatio; it dici poterit, ubi aliquis in aliquâ parte sui corporis effectus sit inutilis ad pugnandum.—Co. Litt. 126.—(Mayhem is the mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.)

Maihemium est homicidium inchoatum. 3 Inst. 118.—(Mayhem is incipient homicide.)

Mail [fr. *malle*, Fr., a trunk], a bag of letters carried by the post, or the vehicle which carries the letters. Also, armour.

Maile, a kind of ancient money, or silver halfpence; a small rent.—9 *Hen. V.*

Maills and Duties, the rents of an estate, whether in money or victuals.—*Scotch Law.*

Maiming, depriving of any necessary part. See MAYHEM.

Mainad, a false oath, perjury.—*Cowel.*

Maine-port, a small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes.—*Cowel.*

Mainour, Manour, or **Meinour**, a thing taken away which is found in the hand (*in manu*) of the thief who took it.—*Cowel.*

Mainovre, or **Mainœuvre**, a trespass committed by hand. See 7 Rich. II. c. 4.

Mainpernable, that which may be held to bail. See Stat. West I., 3 Edw. I. c. 15.

Mainpernor [fr. *main*, Fr., hand, and *preneur*, taker], surety, a kind of bail. See BAIL.

Mainprize [fr. *main*, Fr., and *pris*, taken], delivery into the custody of a friend upon security for appearance. The writ of mainprize is obsolete.—*Old Nat. Br.* 42.

Main-rent, vassalage.

Mainsworn, forsworn.

Maintainors, persons who second or support a cause in which they are not interested, by assisting either party with money, or in any other manner. See next title.

Maintenance, an officious intermeddling in a suit which in no wise concerns one, by assisting either party with money or otherwise, to prosecute or defend it. By the Roman law it was a species of *crimen falsi* to enter into any confederacy, or do any act to support another's law-suits, by money, witnesses, or patronage.

It is either *ruralis*, in the country, as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is *curialis*, in a court of justice, where one officiously intermeddles in a suit depending in any court, which does not belong to him, and with which he has nothing to do.—2 *Rol. Abr.* 115. Maintaining suits in the spiritual courts is not

within the statutes relating to maintenance.—*Cro. Eliz.* 549. A man may, however, maintain a suit in which he has any interest, actual or contingent; and also a suit of his near kinsman, servant, or poor neighbour, out of charity and compassion, with impunity.—*Bac. Abr.*, tit. '*Maintenance.*'

Any legitimate common interest will justify persons jointly subscribing to pay the expenses of a suit, even when it is carried on by a third party.

This offence is punished by Common Law, and also by 1 Rich. II. c. 4, by fine and imprisonment; and by 32 Hen. VIII. c. 9, by a forfeiture of 10*l.* See CHAMPERTY.

Maisnada, a family *Mon. Angl.*, tom. 2, p. 219.

Maison de Dieu, a monastery, hospital, or almshouse.

Maisura, a house, mansion, or farm.—*Cowel.*

Majesty, a title of sovereigns. It was first used among ourselves in the reign of Henry VIII.

Majestas is defined by Ulpian (*Dig.* 48, tit. 4, s. 1) to be '*crimen illud quod adversus populum Romanum vel adversus securitatem ejus committitur.*' He then gives various instances of the crime of *majestas*, some of which pretty nearly correspond to treason in English law; but all the offences included under *majestas* comprehend more than our term treason. One of the offences included in *majestas* was the effecting, aiding in, or planning the death of a *magistratus populi Romani*, or of one who had *imperium* or *potestas*. Though the phrase, '*crimen majestatis*,' was used, the complete expression was *crimen læsæ majestatis.*

Major [fr. *maier*, Old Eng., power], an officer in the army; also, a person of full age, as distinguished from a minor. See FULL AGE; MAJORITY.

Major hæreditas venit unicuique nostrûm à jure et legibus quam à parentibus. 2 Inst. 56.—(A greater inheritance comes to every one of us from right and the laws than from parents.)

Major regalia, the greater rights of the Crown, such as regard the royal character and authority.—1 *Bl. Com.* 241; 2 *Steph. Com.*

Majority, full age (a minor comes of age in the eye of the law on the day preceding the anniversary of his birth); the greater number; the office and rank of major.

Majua, a petty dealer in Hindostan.

Majun, a banker or considerable trader in Hindostan.

Majus dignum trahit ad se minus dignum. Co. Litt. 43.—(The more worthy draws to itself the less worthy.)

Majus jus, a writ or law proceeding in some customary manors, in order to try a right to land.—*Cowel.*

Maker, the person who signs a promissory note; by making it he 'engages that he will pay it according to its tenure, and is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.'—*Bills of Exchange Act*, 1882, s. 88.

Making law, clearing one's self of an action, etc., by an oath and the oath of neighbours. See *Old Nat. Br.* 161; *Kitchin*, 192.

Mal, a prefix, meaning bad, wrong, fraudulent; as mal-administration, mal-practice, malversation, etc.

Mala, a mail, or port-mail; a bag to carry letters, etc.

Malâ fide, in bad faith.

Mala fides, bad faith; the opposite to *bonâ fides*, good faith.

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. 6 Co. 39.—(Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.)

Mala in se, acts which are wrong in themselves, whether prohibited by human laws or not, as distinguished from *mala prohibita.* Of this class are murder, robbery, perjury, etc.—1 *Steph. Com.*; 1 *Broom and Hadley's Com.* 52.

Malandrinus, a thief or pirate.—*Wals.* 338.

Mala praxis. If the health of an individual be injured by the unskilful or negligent conduct of a surgeon, or apothecary, or general practitioner, in assuming to heal a dislocated or fractured limb, or internal disorder, an action for compensation may be sustained (8 *East*, 348); or the wrongdoer may be proceeded against by censure in the college; or, for gross negligence or misconduct he might be indicted.—*Com. Dig.* 'Physician.' And if a medical practitioner, through ignorance or want of skill, should, in attempting to deliver a child, unnecessarily wound the same, and if it be afterwards born alive, and then die of such wound, he will be guilty at least of manslaughter.—*The King* v. *Long*, 4 *C. & P.* 398.

Mala prohibita, wrongs which are prohibited by human laws, but are not necessarily *mala in se*, or wrongs in themselves, as is playing at unlawful games; breaches of *positive* law.—4 *Steph. Com.*

Malary, judicial, belonging to a judge or magistrate.—*Roberts' Indian Glos.*

Malberge [*mons placiti*, Lat.], a hill where

the people assembled at a court, like our assizes; which by the Scotch and Irish were called *parley hills.—Du Cange.*

Malconna, a treasury or storehouse in Hindostan.—*Rob. Ind. Glos.*

Malecreditus, one of bad credit, who is not to be trusted.—*Fleta*, l. 1, c. xxxviii.

Maledicta expositio quæ corrumpit textum. 4 Co. 35.—(It is a bad exposition which corrupts the text.)

Malediction, a curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights.—*Cowel.*

Malefaction, a crime, an offence.

Maleficia non debent remanere impunita; et impunitas cotinuum affectum tribuit delinquenti. 4 Co. 45.—(Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.)

Maleficia propositis distinguuntur. Jenk. Cent. 290.—(Evil deeds are distinguished from evil purposes.)

Maleficium, waste; damage; injury.—*Civ. Law.*

Maleson or **Malison** [fr. *malum*, Lat., evil; and *sonus*, a sound], a curse.—*Bailey.*

Malesworn, or **Malsworn**, forsworn.—*Cowel.*

Maletent, Maletoute, a toll for every sack of wool.—25 *Edw. I.* c. 7.

Malfeasance, the commission of some evil or unlawful act.

Malice [fr. *malitia*, Lat.], a formed design of doing mischief to another, technically called *malitia præcogitata*, or malice prepense or aforethought. It is either *express*, as when one with a sedate and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intentions, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm; or *implied*, as where one wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. The nature of implied malice is illustrated by the maxim '*Culpa lata dolo æquiparatur*'—when negligence reaches a certain point it is the same as intentional wrong—'Every one must be taken to intend that which is the natural consequence of his actions'—if any one acts in exactly the same way as he would do if he bore express malice to another, he cannot be allowed to say he does not.—4 *Steph. Com.*

Malicious burning. The statute law of England and Ireland relating to the offences of maliciously setting fire to property or maliciously attempting so to do, is consolidated and amended by 24 & 25 Vict. c. 97. As to buildings, ss. 1—8; corn, trees, vegetable productions, ss. 16—18; mines, ss. 26, 27; ships, ss. 43, 44. By 12 Geo. III. c. 24, s. 1, which is unrepealed, the offence of maliciously setting fire to ships of war is a capital felony. See ARSON.

Malicious injuries to the Person. See the Consolidating Act, 24 & 25 Vict. c. 100.

Malicious injuries to private property. The 24 & 25 Vict. c. 97, consolidated and amended the laws relating to this subject. The offence is made felony, punishable by penal servitude or imprisonment in many cases. As to the malicious destruction of works of art, science, etc., in public institutions, see s. 39.

Malicious prosecution, a prosecution, preferred maliciously, without reasonable or probable cause; the remedy is an action on the case, in which damages may be recovered. The allegation of want of probable cause must be substantively and expressly proved, and cannot be implied (1 *T. R.* 544, 545). From the want of probable cause malice may be implied. See *Addison on Torts*, 6th ed., 219.

Malignare, to malign or slander; also to maim.

Malik, a proprietor.—*Indian.*

Malins (Sir Richard) Acts. The Infants Marriage Settlement Act, 18 & 19 Vict. c. 43, and the Married Women's Reversionary Property Act, 20 & 21 Vict. c. 57.

Malitia præcogitata, malice aforethought. See MALICE.

Malitia supplet ætatem. Dyer, 104 *b.*—(Malice supplies [the want of] age.)

Mallum and **Mallus.** See METHEL.

Malo grato, in spite; unwillingly.

Malt mulna, a quern or malt mill.—*Mat. Par.*

Malt-shot or **Malt-scot**, a certain payment for making malt.—*Somner.*

Abolished by the Inland Revenue Act, 1880, 33 & 34 Vict. c. 20, which substitutesa duty on beer.

Malum in se. See MALA IN SE.

Malum non habet efficientem, sed deficientem causam. 3 Inst. (Proem.)—(Evil has not an efficient, but a deficient cause.)

Malum non præsumitur. 4 Co. 72.—(Evil is not presumed.)

Malum prohibitum. See MALA PROHIBITA.

Malum quo communius eo pejus. (The more common an evil is, the worse.)

Malus usus est abolendus. Litt. s. 212.—(An evil or invalid custom [or an abuse] ought to be abolished.) *Broom's Max.*, 6th ed., 876.

Malveilles [fr. *malveillance*, Fr.], ill-will; crimes and misdemeanours; malicious practices.—*Cowel.*

Malveisa, a warlike engine to batter and beat down walls.—*Mat. Par.*

Malveisin [fr. *mauvais voisin*, Fr.], an ill neighbour, a warlike engine so called.—*Mat. Par.*

Malveis procurors, such as used to pack juries, by the nomination of either party in a cause, or other practice.—*Art. super Chart.* c. x.; *Cowel.*

Malversation, misbehaviour in an office, employment, or commission, as breach of trust; extortion, etc.

Man, Isle of, an island in the Irish Sea off the coast of Cumberland, Westmoreland, and Lancashire. The island is divided into two districts, which are subdivided into six sheadings including seventeen parishes. Each sheading has its own coroner, to whom the jury-list for the sheading is committed, and who is bound to summon the juries from that list when required.—4 *Inst.* 283.

This was formerly a distinct territory, but by 5 Geo. III. cc. 26, 39, the whole island and all its dependencies, except the landed property of the Athol family, and some other rights belonging to them, are inalienably vested in the Crown, and subjected to the regulations of the British excise and customs.

Mana, an old woman.—*Jacob.*

Manacle [fr. *Manus*, Lat.], chain for the hands; shackle.

Manager, a superintendent, a conductor, or director. As to frauds by managers of companies, see 24 & 25 Vict. c. 96, ss. 81—84.

Managium, a mansion-house or dwelling-place.—*Cowel.*

Manbote, a compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *wer*.—*Anc. Inst. Eng.*

Manca, Mancus, or **Mancusa**, a square piece of gold coin, commonly valued at 30 pence.—*Cowel.*

Manceps [Lat.], a farmer of the public revenues; one who sold an estate with a promise of keeping the purchaser harmless; one who bought an estate by outcry; one who undertook a piece of work and gave security for the performance.

Manche-present, a bribe; a present from the donor's own hand.

Manchester. It became a municipal borough in 1838. Its bishopric was established by 10 & 11 Vict. c. 108. The 'Manchester Parish Division Act, 1850,' is 13 & 14 Vict. c. 41. The 23 & 24 Vict. c. 69, enables the Ecclesiastical Commissioners to apply certain funds towards the repairs of the cathedral of Manchester; and see 31 & 32 Vict. c. 114, s. 15. See also the Bonding Acts, 7 & 8 Vict. c. 31, and 13 & 14 Vict. c. 84; the Local Government Act, 22 Vict. c. 31; and the Stipendiary Magistrates Acts, 7 & 8 Vict. c. 30, and 17 & 18 Vict. c. 20.

Mancipate, to enslave; to bind; to tie.

Mancipatio. Every father, in the Roman law, had such an authority over his son, that before the son could be released from his subjection and made free he must be twice sold and bought, his natural father being in the first instance the vendor. The vendee was called *pater fiduciarius*. After this fictitious bargain, the *pater fiduciarius* sold him again to his natural father, who could then, but not till then, manumit or make him free. The imaginary sale was called *mancipatio*; and the act of giving him liberty, or setting him free, was called *emancipatio*.

Also, selling or alienating of certain lands by the balance or money paid by weight, and in the presence of five witnesses. This mode of alienation took place only among Roman citizens, and that only in respect to certain estates situated in Italy, which were called *mancipia*.—*Encyc. Lond.* Abolished by Justinian, when he obliterated the distinction between things *mancipi* and things *nec mancipi*. See *Sand. Just.*, 7th ed., cxlvii.

Manciple [fr. *manceps*, Lat.], a clerk of the kitchen, or caterer, especially in colleges.—*Cowel.*

Mandamus (*we command*), a high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the Queen's name from the Court of Queen's Bench only (except a *mandamus* to examine witnesses in India, etc., under 1 Wm. IV. c. 22, s. 1, and a *mandamus* under 17 & 18 Vict. c. 125, which might be awarded by any of the three superior courts of Common Law), and addressed to any person, corporation, or inferior court of judicature within the kingdom, requiring them to do something therein specified, which appertains to their office, and which the Court holds to be consonant to right and justice. It is used principally for public purposes, and to enforce performance of public rights or duties. It enforces, however, some private rights when they are withheld by public officers.

It is a general rule that this writ is only to be issued where a party has no other specific remedy; and he must apply to the Court without delay. The jurisdiction is altogether in the discretion of the Court.

The remedy by *mandamus* was extended by the Common Law Procedure Act, 1854, by which (ss. 68—77) the plaintiff, in the superior courts, except in replevin and ejectment, may endorse upon the writ a notice that he intends to claim a writ of *mandamus*,

and may claim one in the declaration, with or without any other demand, for the defendant to fulfil a duty in which the plaintiff is interested. The provisions of the C. L. P. Acts, 1852 and 1854, applied to the proceedings and pleadings upon a prerogative writ of *mandamus* issued by the Court of Queen's Bench.

By 11 & 12 Vict. c. 44, 'Jervis's Act,' s. 5, the Court may, in lieu of a *mandamus*, grant a rule ordering justices to do any act appertaining to their office, and the County Courts Act, 1888, s. 131, makes a similar provision as to County Court Judges.

The issuing of this writ being part of the original jurisdiction of the Court of Queen's Bench, and a matter within its exclusive cognizance, is assigned to the Queen's Bench Division of the High Court (Jud. Act, 1873, s. 34). For rules of procedure see Crown Office Rules, 1886, 60—80.

An interlocutory *mandamus* may be granted by order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made (Jud. Act, 1873, s. 25 (8)).

Mandant, the principal in the contract of mandate.

Mandata licita strictam recipiunt interpretationem; sed illicita latam et extensam. Bac. Max. Reg. 16.—(Lawful authority is to receive a strict interpretation; unlawful authority, a wide and extended interpretation.) See per *Byles, J.*, in *Parkes* v. *Prescott*, 38 *L. J. Ex.* 111; and *L. R.*, 4 *Ex.*, 182.

Mandatarius terminos sibi positos transgredi non potest. Jenk. Cent. 53.—(A mandatary cannot exceed the bounds placed upon himself.)

Mandatary [fr. *mandatarius*, Lat.], he to whom a mandate, charge, or commandment is given; also, he that obtains a benefice by *mandamus*.

Mandate [fr. *mandatum*, Lat.], a judicial command, charge, commission.

Also, a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employed is called in the civil law *mandant* or *mandator*, and the person employed *mandatarius* or mandatary. The distinction between a mandate and a deposit is, that in the latter the principal object of the parties is the custody of the thing; and the service and labour are merely accessorial. In the former the labour and service are the principal objects of the parties, and the thing is merely accessorial. Three things are necessary to create a mandate: (1) that there should exist something which should be the subject of the contract, or some act or business to be done; (2) that it should be done gratuitously; (3) that the parties should voluntarily intend to enter into the contract. A mandatory incurs three obligations: (1) to do the act which is the object of the mandate, and with which he is charged; (2) to bring to it all the care and diligence that it requires; (3) to render an account of his doings to the mandator. A mandator contracts to reimburse a mandatary for all expenses and charges reasonably incurred in the execution of the mandate, and also to indemnify him for his liability on all contracts which arise incidentally in the proper discharge of his duty. The contract of mandate may be dissolved either by the renunciation of the mandatary at any time before he has entered upon its execution, or by his death; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But if the mandate be partly executed, there may in some cases arise a personal obligation on the part of the representatives to compel it. *Story's Bailments*, c. iii. In the canon law, a rescript of the Pope, by which he commands some ordinary collator or precentor to put the person there nominated in possession of the first benefice vacant in his collation. As to their abuses, see 2 *Hall. Mid. Ages*, 212.

The granting of royal mandates to judges for interfering in private causes, constituted a branch of the royal prerogative, which was given up by Edward I. And 1 W. & M. st. 2, c. 2, declares that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

Mandati Dies, Maundy Thursday.

Mandato, panes de, loaves of bread given to the poor upon Maundy Thursday.

Mandator, director. See MANDATE.

Mandatory, perceptive; directory.

Mandatum, a fee or retainer given by the Romans to the *procuratores* and *advocati*. *Mandatum* is also used in the sense of a command from a superior to an inferior. See also MANDATE.

Mandavi ballivo (*I have commanded the bailiff*). If a bailiff of a liberty have the execution and return of a writ, the sheriff may return that he commanded the bailiff to execute it; and if the bailiff have not made a return, the sheriff should return that fact accordingly (*mandavi ballivo qui nullum debit responsum*); or if he have made a return, the sheriff should return it.—1 *Chit. Arch. Prac.*

Manentes [fr. *maneo*, Lat., to continue], tenants. Obsolete.—*Cowel.*

Manerium dicitur à manendo, secundum excellentiam, sedes magna, fixa, et stabilis.

Co. Litt. 58.—(A manor is so called from '*manendo*,' according to its excellence, a seat, great, fixed, and firm.)

Mangonare, to buy in a market.—*Leg. Etheld.* c. 24.

Mangonellus, a warlike instrument for casting stones against the walls of a castle.—*Cowel.*

Mania, mental alienation, which see.

Mania a potu, otherwise denominated *delirium tremens*, a disease induced from the intemperate use of spirituous liquors or certain other diffusible stimulants.

Manifesta probatione non indigent. 7 Co. 40.—(Things manifest do not require proof.)

Manifesto, or **Manifest**, a public declaration made by a prince, in writing, showing his intention to begin a war or other enterprise, with the motives that induce him to it, and the reasons on which he founds his rights and pretensions.—*Encyc. Lond.*

In commercial navigation, a document signed by the master, containing the names of the places where the goods have been laden, and the places for which they are destined, the name and tonnage of the vessel, the name of the master, and the place to which the vessel belongs, a particular description of the packages on board, marks, numbers, etc., the goods contained in them, and the names of the shippers and consignees, as far as known. The manifest must be made out, dated, and signed by the captain, at places where the goods, or any part, are taken on board.

Manipulus, according to *Blount*, was 'a handkerchief, which the priest always had in his left hand.' It was used for wiping the chalice.

Manner, or **Mainour** [fr. the Fr. *manier*]. To be taken with the manner is where a thief is taken with the stolen goods about him—as it were in his hands; that is *in flagrante delicto.*

Manning, a day's work of a man.—*Cowel.*

Mannire, to cite any person to appear in court and stand in judgment there; it is different from *bannier*; for though both of them are citations, this is by the adverse party and that is by the judge.—*Du Cange.*

Manopus, goods taken in the hands of an apprehended thief.—*Cowel.* See MANU OPERA.

Mannus, a horse.—*Cowel.*

Manœuvres, Military. See MILITARY MANŒUVRES.

Manor [fr, *manerium*, Lat.; *manior*, Fr., habitation, or *manendo*, of abiding there, because the lord usually resided there], an estate in fee simple in a tract of land granted by the sovereign to a subject (usually of power and consequence) in consideration of certain services to be performed. The *tenementales* were granted out; the *dominicales* (whence the term demesne) were reserved to the lord; the barren lands which remained formed the 'wastes'; the whole fee was termed a lordship or barony; and the court appendant to the manor the court baron. Every manor (with some doubtful and unimportant exceptions) is of a date prior to the statute of *Quia Emptores* (18 Edw. I. c. 1). See *Co. Litt.* 58 *a*; 1 *Steph. Com.*; and COPYHOLD.

Man-queller [fr. *man* and *cwellan*, Sax.], a murderer.

Manrent, a kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other.—*Rob. Scott.* b. 1.

Manso, or **Mansum**, a mansion or house.—*Spelm.*

Manse, a house or habitation, either with or without land. See next title.

Manse, or **Mansum presbyteri**, the dwelling-house of the clergyman.—*Paroch. Antiq.* 431. Sometimes called *presbyterium.*

Manser, a bastard.—*Cowel.*

Mansion [*mansio*, Lat., *à manendo*], the lord's house in a manor. See next title.

Mansion-house, a dwelling-house.—3 *Inst.* 64. See LIMITED OWNERS' RESIDENCES ACT. The Settled Land Act, 1882, 45 & 46 Vict. c. 38, gives (see SETTLED LAND) a tenant for life a power to sell settled land, but by s. 10 of the Settled Land Act, 1890, repealing and re-enacting, with amendments, s. 15 of that Act, the 'principal mansion house' (unless it be usually occupied as a farm house, or its site with its park, etc., do not exceed twenty-five acres in extent), may not be sold, exchanged or leased by such tenant for life without the consent of the trustees of the settlement, or the order of the Chancery Division of the High Court.

Manslaughter, the unlawful killing of another without malice express or implied. It is either—

(*a*) Voluntary, upon a sudden heat; or
(*β*) Involuntary, upon the commission of some other unlawful act.

Both are felony, and punished, at the discretion of the Court, by penal servitude for life, or not less than three years, or by a fine.—24 & 25 *Vict.* c. 100, s. 5.

Mansum capitale, the manor house or lord's court.—*Paroch. Antiq.* 150.

Mansura, the habitation of people in the country.—*Domesday.*

Mansus, a farm.—*Selden's Hist. of Tithes*, 62.

Mantea, a long robe or mantle.—*Old Records.*

Mantheoff [fr. *mannus*, Lat., a horse; and *theft*, Sax., a thief], a horse-stealer.—*Leg. Alf.*

Manticulate, to pick pockets.—*Bailey.*

Man-trap, engines to catch trespassers, unlawful, unless set in a dwelling-house for defence between sunset and sunrise.—24 & 25 *Vict.* c. 100, s. 31.

Manualia beneficia, the daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence.—*Cowel.*

Manualis obedientia, sworn obedience or submission upon oath.—*Cowel.*

Manucaptio, a writ that lay for a man taken on suspicion of felony, etc., who cannot be admitted to bail by the sheriff or others having power to let to mainprise.—*F. N. B.* 249.

Manucaptor, one who stands bail for another.

Manufacture, anything made by art. As to a patent for a manufacture, see LETTERS-PATENT. As to the operation of the Factory Acts, see that title, and consult *Notcutt on the Factory & Workshop Acts.* As to the manufacturing of gunpowder and other explosives, see 38 Vict. c. 17.

Manu forti (*with strong hand*).

Manumission, the act of giving freedom to slaves. Among the Romans it was performed in three several ways: 1st, when with his master's consent a slave had his name entered in the census or public register of the citizens; 2nd, when the slave was led before the prætor, and that magistrate laid his wand (*vindicta*) on his head; 3rd, when the master, by his will, gave his slave freedom. Among us, in the time of the Conqueror, villeins were manumitted by their master delivering them by the right hand to the viscount or sheriff in full court, showing them the door, giving them a lance and a sword, and proclaiming them free. Others were manumitted by charter. There was also an implied manumission, as when the lord made an obligation for payment of money to the bondman at a certain day, or sued him where he might enter without suit, and the like.—*Encyc. Lond.*

Manumittere idem est quod extra manum vel potestatem ponere. Co. Litt. 137.—(To manumit is the same as to place beyond hand and power.)

Manung, or **Monung**, the district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz.: to exact (*amanian*) all fines.—*Anc. Inst. Eng.*

Manu opera, cattle or implements of husbandry; also, stolen goods taken from a thief caught in the act.—*Cowel.*

Manupastus, a domestic; perhaps the same as *hlafæta.*—*Anc. Inst. Eng.*

Manupes, a foot of full and legal measure.

Manurable, admitting of tillage.

Manus, an oath, from the ceremony of laying the hand on the book; also the person taking an oath, or compurgator.

Manas mediæ, or **infimæ homines**, men of a mean condition, or of the lowest degree.

Manutenentia, the old writ of maintenance. —*Reg. Orig.* 182.

Manwryth, the value or price at which a man is estimated, according to his degree; apparently synonymous with *wer-geld.* It occurs only in the laws of Hlothhære and Eadric.—*Anc. Inst. Eng.*

Mara, a mere, lake, or great pond, that cannot be drawn dry.—*Par. Antiq.* 418; *Mon. Angl.*, tom. 1, p. 666.

Marcatus, the rent of a mark by the year anciently reserved in leases, etc.

Marchandises avariées [Fr.], damaged goods.

Marchers, or **Lord Marchers**, those noblemen who lived on the marches of Wales and Scotland, who, in times past, had their laws and regal power, until they were abolished by 27 Hen. VIII. c. 26.

Marches, the boundaries of countries and territories; the limits between England, Wales, and Scotland. Also, in Scotland, the boundaries between private properties.—*Co. Litt.* 106 *b.*

Marches, Court of, an abolished tribunal in Wales, where pleas of debt or damages, not above the value of 50*l.*, were tried and determined.—*Cro. Car.* 384.

Marchet, or **Marchetta**, a pecuniary fine, anciently paid by the tenant to his lord for the marriage of one of the tenant's daughters. This custom obtained, with some difference, throughout all England and Wales, as also in Scotland; and it still continues to obtain in some places. It is also denominated *gwahr-merched*, i.e., maid's fee.—*Co. Litt.* 117 *b.*, 140 *a.*

Marchioness [formed by adding the English female termination to the Latin *marchio*], a dignity in a woman answerable to that of marquess in a man, conferred either by creation, or by marriage with a marquess.

Mare Clausum, the title of a celebrated work by Selden, written in answer to the treatise called Mare Liberum. *Vide infra.*

Mare Liberum, a famous treatise by Grotius, to show that all nations have an equal right to use the sea.

Mareschall, or **Mareshal**, a marshal.

Marettum [fr. *maret*, Fr., a fen or marsh], marshy ground overflowed by the sea or great rivers.—*Co. Litt.* 5.

Marginal note. An abstract of a reported

case, a summary of the facts, or brief statement of the principle decided, which is prefixed to the report of the case, sometimes in the margin, is spoken of by this name.

The marginal notes which appear in the statute-books have not the authority of the legislature, and cannot alter the interpretation of the text. See *Claydon* v. *Green*, *L. R.* 3 *C. P.* 522, per *Willes*, *J.*; *Sutton* v. *Sutton*, 22 *Ch. D.* 573, per *Jessel*, *M. R.*

Marinariorum capitaneus, an admiral or warden of the ports.—*Par. Antiq.*

Marinarius, a mariner or seaman.—*Par. Antiq.*

Marine, a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also one of the marines. See MARINES.

Marine Insurance. See INSURANCE.

Marines, a military force drilled as infantry, whose especial province is to serve on board ships of war when in commission. The force was first established about the middle of the last century. When serving on board ship, their discipline is regulated by the Naval Discipline Act, 29 & 30 Vict. c. 109; when on shore, by an Act annually passed, called the Army (Annual) Act.

Marine Society, a charitable institution for the purpose of apprenticing boys to the naval service, etc., incorporated by 12 Geo. III. c. 67.

Marine-store dealers. See 17 & 18 Vict. c. 104, ss. 480—483; by which dealers in 'anchors, cables, sails, old junk, old iron, or marine-stores of any description, must enter in a book all such marine-stores as he may become possessed of, and may not cut up cables, etc., without obtaining a 'permit' from a justice of the peace.'

Marischal, an officer in Scotland, who, with the Lord High Constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the Court, wherever it might happen to be.

Mariscus, a marshy or fenny ground.—*Domesday*; *Co. Litt.* 5 *a.*

Maris et fœminæ conjunctio est de jure naturæ. 7 Co. 13.—(The connection of male and female is by the law of nature.)

Maritagio amisso per defaltam, an obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was deforced.

Maritagium, the portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.—*Spelm.* See 1 *Reeves* (*Finlason's Edition*), 171.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quieta sit et libera ab omni seculari servitio. Co. Litt. 21. —(A marriage portion is either free or bound to service; it is called frank-marriage when the giver wills that land thus given be exempt from all secular service.)

Maritagium habere, for **Maritare**, to have the free disposal of an heiress in marriage.

Marital [fr. *maritus*, Lat.], pertaining to a husband; incident to a husband.

Marital rights. Rights of a husband. Where a woman, during a treaty for marriage, made a settlement of property without the concurrence of her intended husband, the husband after the marriage became entitled to have such settlement set aside as a *fraud on his marital rights* (see *Strathmore* v. *Bowes*, 1 *W. & T. L. C.*, 6th ed., 471), but it is conceived that the Married Women's Property Act, 1882 (see MARRIED WOMEN'S PROPERTY), has abolished this right of the husband, which was founded on the rule of the Common Law, abrogated by that statute, that the property of the wife became by marriage the property of the husband.

Maritima Angliæ, the profits and emoluments arising to the Crown from the sea, which anciently were collected by sheriffs; but they were afterwards granted to the Lord High Admiral.—*Par.* 8 *Hen. III.* m. 4.

Maritime courts. These were formerly the High Court of Admiralty and its court of appeal, the Judicial Committee of the Privy Council. But by the Judicature Act, 1875, s. 16, the jurisdiction of the High Court of Admiralty is transferred to, and vested in the High Court of Justice; and all causes and matters pending in that Court, or which would have been within its exclusive cognizance, are now assigned to a division of the High Court, called the Probate, Divorce, and Admiralty Division (Ibid., s. 34). The appeal from the Admiralty branch of that division lies to the Court of Appeal (Ibid., s. 18 (5)), with a further appeal in some cases for the present to the House of Lords (Jud. Act, 1875, s. 2). Courts of Vice-Admiralty are established in Her Majesty's possessions, beyond the seas, with jurisdiction over maritime causes, including those relating to prize. By 2 Wm. IV. c. 51, it is enacted, that in all cases where a ship comes within the local limits of a Court of Vice-Admiralty, suits may be commenced therein for 'seamen's wages, pilotage, bottomry, damage to ships by collision, breach of regulations of the royal service at sea, salvage, and droits of admiralty,' notwith-

standing the cause of action may have arisen out of the local limits of such Courts. See also 26 & 27 Vict. c. 24; 30 & 31 Vict. c. 45; and 32 & 33 Vict. c. 75. See also ADMIRALTY; and consult *Williams & Bruce's Admiralty Practice.*

Maritime Law, the law relating to harbours, ships, and seamen. An important branch of the commercial law of maritime nations; divided into a variety of departments, such as those about harbours, property of ships, duties and rights of masters and seamen, contracts of affreightment, average, salvage, etc. No system or code of maritime law has ever been issued by authority in Great Britain. The laws and practices that now obtain amongst us have been founded on the practice of merchants, the principles of the civil law, the laws of Oleron and Wisby, the works of jurisconsults, the judicial decisions of our own and foreign countries, etc. Though still susceptible of amendment, our system corresponds more nearly than any other system of maritime law with those universally recognized principles of justice and general convenience on which merchants and navigators should act.

The decisions of Lord Mansfield did much to fix the principles and to improve and perfect the maritime law of England. It is also under great obligations to Lord Stowell. The decisions of the latter chiefly have reference to questions of neutrality, and of the conflicting pretensions of belligerents and neutrals; but the principles and doctrines which he unfolds throw a strong light on all branches of maritime law. It has, indeed, been alleged, that his lordship favoured the claims of belligerents. But his judgments must be regarded, allowing for this bias, as among the noblest monuments of judicial wisdom.—*McCull Comm. Dict.* As to the maritime laws of early times, see 3 *Hall. Mid. Ages*, 333.

Maritime state, consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by Act of Parliament.

Mark [fr. *marc*, Welsh; *mearc*, Sax.; *merche*, Dut.; *marque*, Fr.], a token; an impression; a proof; an evidence; license of reprisals; also, formerly, a coin of the value of 13*s.* 4*d.*

In commerce and manufacture, a certain character struck or impressed on various kinds of commodities, either to show the place where they were made, and the person who made them, or to witness that they have been viewed and examined by the officers charged with the inspection of manufactures; or to show that the duties imposed thereon have been paid. It is also used to indicate the price of a commodity. If one use the mark of another, to do him damage, an action on the case will lie, and an injunction may be obtained in Chancery.—2 *Cro.* 471. See TRADE MARKS.

Those who are unable to write sign a cross, for their mark, when they execute any document. See MARKSMAN.

Markepenny, a penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets.—15 *Edw. I.*

Market [anciently written *mercat*, fr. *mercatus*, Lat.] a public time and appointed place of buying and selling; also purchase and sale. It differs from the *forum*, or market of antiquity, which was a public market-place on one side only, the other sides being occupied by temples, theatres etc.

A market can only be set up by virtue of a royal grant, or by long and immemorial usage, which presupposes a grant.

See FAIRS; and Public Health Act, 1875, s. 167; and the Markets and Fairs Clauses Act, 1847, 10 Vict. c. 14.

As to disturbance of market, see *Goldsmid* v. *Great Eastern Railway Co.*, 9 *App. Cas.* 928.

Market overt, an open market. Contracts of sale which transfer the property as against a real owner though not the seller, are binding, if made according to the following rules:—(1) the sale must be in a place that is open, so that any one who passes may see it, and that is proper for the sale of such goods; (2) it must be an actual sale for a valuable consideration; (3) the buyer must not know that the seller has a wrongful possession of the goods sold; (4) the sale must not be fraudulent between two to bar a third person of his right; (5) there must be a sale and a contract by persons able to contract; (6) the contract must be originally and wholly in the market overt; (7) toll ought to be paid where required by statute; (8) the sale ought not to be in the night, though, if the sale be made in the night, it may bind the parties.—5 *Rep.* 83; and see *Hargreave* v. *Spink* 65 L. T. 650 decided in 1891.

Market, Court of the Clerk of the, a tribunal incident to every fair and market in the kingdom, to punish misdemeanours therein; as a court of *piedpoudre* is to determine all disputes relating to private or civil property. The object of this, the most inferior criminal jurisdiction, is principally the recognisance of weights and measures, to try whether they be according to the true standard which was anciently committed to the custody of the

bishop, who appointed some clerk under him to inspect abuses of them more narrowly; and hence this officer, though usually a layman, is called the clerk of the market. His functions, however, are by the Weights and Measures Act. See WEIGHTS AND MEASURES.

Market geld, the toll of a market.

Market price. See VALUE.

Market towns, those towns which are entitled to hold markets.—1 *Steph. Com.*

Marketable, such things as may be sold; those for which a buyer may be found. See FAIRS.

Markets and Fairs. The Markets and Fairs Clauses Act, 1847, 10 & 11 Vict. c. 14, regulates the imposition of tolls, etc. See the Public Health Act, 1875, s. 167, which incorporates some of its provisions, and title FAIRS.

The weighing of cattle at markets and fairs is provided for by the Markets and Fairs (Weighing of Cattle) Acts, 1887, 50 & 51 Vict. c. 27, and 54 & 55 Vict. c. 70.

Marketzeld. See MARKET GELD.

Marksman, a person who cannot write, and therefore makes his mark X only in executing instruments, which mark is a sufficient 'signature' of a will (re *Clarke*, 1 *Sw. & T.* 22) or of a writing which the Statute of Frauds requires to be signed (see *Baker* v. *Dening*, 8 *A. & E.* 94. See MARK.

Marlebridge, Statute of, 52 Hen. III., A.D. 1267, enacted at Marlebridge, now Marlborough, and principally directed against unlawful and excessive distresses, as to which it is still in force.

Marque [fr. *mearc*, Sax.; *signum*, Lat.], a mark, a sign; reprisals. See LETTERS OF MARQUE.

Marquis or **Marquess** [fr. *marquis*, Fr.; *marchio*, Lat.; *margrave*, Ger.], one of the second order of nobility, next in order to a duke. The first marquis was Robert de Vere, Earl of Oxford, whom Richard II. in the year 1386 made Marquis of Dublin.

A marquis is styled by the sovereign in Royal Commissions, etc., 'our right trusty and entirely-beloved cousin.' His title is 'most honourable'; and his sons, by courtesy, are styled lords, and his daughters ladies.

Marquisate, the seigniory of a marquis.

Marriage. Previous to 1753 the validity of marriage was regulated by ecclesiastical law, not touched by any statutory nullity, but modified by the Common Law courts, which sometimes interfered with the ecclesiastical courts by prohibition, sometimes themselves decided on the validity of a marriage, presuming a marriage in fact as opposed to *lawful* marriage. A religious ceremony by an ordained clergyman was essential to a lawful marriage, at all events for dower and heirship; but if in an irregular marriage the ecclesiastical court could discern a valid promise to marry, it would order the parties to solemnise marriage '*in facie ecclesiæ*' (*Baxter* v. *Buckley*, 1 Lee 42), and declare any subsequent intermediate marriage by either party invalid. But whether or not a mere contract '*per verba de præsenti*' ever constituted by itself a valid marriage in England as regards dower, heirship, and bigamy, is so doubtful, that in 1843 the House of Lords and the Court appealed from were equally divided on the point in *Reg.* v. *Millis*, 10 *Cl. & F.* 534. In 1753 Lord Hardwicke's Act, 26 Geo. II. c. 33, passed to prevent clandestine marriages, required, under pain of nullity, that banns should be published according to the rubric, or a licence obtained, and in either case that the marriage should be solemnised in church; and as to minors, that the father, mother, or guardian should previously consent to their marriage if by licence. The Act further abolished the suits in the ecclesiastical court to compel marriage '*in facie ecclesiæ*,' which abolition made more common the action of breach of promise of marriage, which is of comparatively modern date. The strictness of Lord Hardwicke's Act led to marriages being annulled through misnomers in the banns by the fault of one party in putting them up. And the requiring of consent not infrequently worked great evil and injustice; e.g., a marriage was dissolved after 22 years' cohabitation and numerous issue by the husband proving that he was a minor at the time of his marriage, though he then swore he was 21. Afterwards 3 Geo. IV. c. 75 validated all such marriages by licence without consent where the parties had subsequently lived together till the passing of the Act.

Present Law.—The general purport of the existing law is to require a public ceremony by a clergyman of the Church of England, or by a dissenting minister, or a Roman Catholic priest, in a building registered for marriages, and in the presence of the registrar, or by the registrar in his office, solemnised within the hours of 8 A.M. and 3 P.M. (see the Marriage Act, 1886), and preceded by and within 3 months after banns, license, or certificate have been published or obtained.

Church of England marriages are regulated by 4 Geo. IV. c. 76, which requires publication of banns as before. But it is only if both parties have concurred in falsifying the names in the banns that the marriage can be annulled. As to licenses, neither misnomer, even by concurrence of both parties, nor

fraud or perjury in obtaining the license, will affect the validity of the subsequent marriage. (*Bevan* v. *Macmahon*, 30 *L. J. P. & M.* 61). As to consent of parents to the marriage of a minor, by license, one of the parties must swear before the surrogate that consent has been obtained. But if this is false, and one or both parties are minors, the marriage will still be good (*R.* v. *Birmingham*, 8 *B. & C.* 29), though the guilty party may be punished by being deprived of all property accruing through the marriage; but if the marriage of the minor is by banns the parent must openly dissent in church at time of publication, and if so publication will be void. The marriage must take place according to the rubric; if after banns, in one of the churches where the banns were published; if by license then in the church specified in the license, in the presence of two witnesses. After the ceremony, the clergyman must enter the particulars of the marriage in the register according to the form laid down in 5 & 6 Wm. IV. c. 86, the entry to be signed by the clergyman, the parties, and the two witnesses. It may be noted that a clergyman cannot marry himself. Special licenses are granted by the Archbishop of Canterbury on special grounds, as a matter of discretion or to persons of high rank; they cost 29*l.* 8*s.* No period of residence is necessary, and they may authorise marriage at any hour or in any place, whether consecrated or not (see *Doe dem. Egremont* v. *Grazebrook*, 4 *Q. B.* 406). The marriage of dissenters in general, according to their own rites, was first provided for by 6 & 7 Wm. IV. c. 85, amended by 19 & 20 Vict. c. 119, all, whether Roman Catholics, Presbyterians, or other, being treated on the same footing; except that for Jews and Quakers, who were formerly exempted from the general legislation, and allowed to use their own ceremonies, and are even now subjected to some peculiar legislation, the presence of the registrar is not required at their weddings. Notice must be given by the parties to the superintendent registrar of particulars according to the form in Sch. A. to 19 & 20 Vict. c. 119, after which, in either 2 or 21 days, the registrar will issue a license or a certificate to marry (see Schs. B. & C.). The marriage can then, at any time within three months after, take place at the registered chapel specified in the license or certificate, in the presence of the registrar and two witnesses, according to any ceremony. But in some part of it each of the parties must declare, 'I do solemnly declare, that I know not of any lawful impediment why I., A. B., may not be joined in matrimony to C. D.,' and each say to the other, 'I call upon these persons here present to witness that I., A. B., do take thee, C. D., to be my lawful wedded wife (or husband).' After the ceremony the marriage must be entered in the register according to 6 & 7 Wm. IV. c. 86, above referred to. Marriage can also be solemnised, if the parties so prefer, by the registrar alone, after notice and certificate or license, at the registrar's office, according to the form of words quoted.

Statutory nullities are imposed by s. 22 of 4 Geo. IV. c. 76 for church marriages, and s. 42 of 6 & 7 Wm. IV. c. 85 for dissenters' marriages, declaring the marriage null and void if the parties 'knowingly and wilfully intermarry in any other place than a church or chapel where banns may be lawfully published,' or 'in any other place than the church, chapel, registered building, or office specified in the notice of certificate,' or 'without due publication of banns or license from a person having authority to grant the same first obtained' or 'without due notice to the superintendent registrar, or without certificate of notice duly issued, or without license . . . or without the presence of a registrar or superintendent registrar where the presence of the registrar or superintendent registrar is necessary under the Act, or knowingly and wilfully consent to or acquiesce in the solemnisation of such marriage by any person not in holy orders.' As to marriage by a pretended clergyman, Lord Stowell, in *Hawke* v. *Corri*, 2 *Con.* 280, says: 'It seems to be a generally accredited opinion that, if a marriage is had by the ministration of a person in the church, who is ostensibly in Holy Orders, and is not known or suspected to be otherwise, such marriage shall be supported,' and the wording of the section quoted supports Lord Stowell's view; but see 51 & 52 Vict. c. 28, validating marriages by G. F. W. Ellis, a sham parson, who held a living. As to publication of banns or misnomers in surrogate's license, see above. In a notice to a registrar it would appear that accuracy is not essential (*Holmes* v. *Simmons*, 1 *P. & D.* 523). As to the interpretation of the words 'knowingly and wilfully' in the sections quoted, see the report of the Marriage Laws Commission, 1868, where it is further laid down that a marriage would be void 'if it were solemnised (however ignorantly) without *any* publication of banns at all, or any common or special license, or registrar's certificate or license; or if it were solemnised in a church or other place where no banns had been published; or (if the marriage was not by banns) which was manifestly unauthorised by the terms of the license or

certificate as actually granted.' But the Courts are wont to presume in favour of marriage that all was done rightly; e.g., that the chapel was registered for marriages, and that the registrar was present at the ceremony. Further, it has become a constitutional practice of the legislature to pass from time to time, as required, special validating Acts to confirm, *ex majori cautela*, marriages where some general defect of form or a slip might throw doubt on them; e.g., where the church or chapel in which the marriage took place was not consecrated, or registered or licensed for marriages. See 44 Geo. III. c. 77 and 24 Vict. c. 26, and other acts in *pari materia*, collected in Appendix XI. to the Chronological Table of Statutes.

Non-Statutory Essentials.—The age for marriage has been fixed from the earliest times at 14 for males, 12 for females. Each party must go through the ceremony, consenting as a free agent without fraud or duress (see *Scott* v. *Sebright*, 12 *P. & D.* 20). They must be unmarried. If a husband or wife is absent for 7 years without being heard of, the other party marrying again cannot be prosecuted or convicted for bigamy. But proof that the absent husband or wife was alive at the time of the second marriage will invalidate it. Persons who are divorced may marry again after the decree is made absolute. As to this, and as to how far the English law recognises foreign divorces, see DIVORCE.

Lunacy existing at the time of the marriage, avoids the marriage. See Lord Durham's case, 10 P. D. 80, and 51 Geo. III. c. 37.

Down to 1835, marriages within the prohibited degrees of consanguinity or affinity (see 32 Hen. VIII. s. 38, printed 1 *Rev. Stat.* N. S. 370, as referring to 28 Hen. VIII. c. 7, s. 7, and 28 Hen. VIII. c. 16, s. 2, were merely voidable by suit in the ecclesiastical court during the life of the parties. But 5 & 6 Wm. IV. c. 35, while validating all previous marriages within the degrees of affinity, made all future marriages within the prohibited degrees of consanguinity or affinity null and void.

Impotence, as a reason for annulling marriage, must exist at the time of the marriage, and be incurable; further, it makes it only voidable by a suit by one of the parties during their joint lives (*A.* v. *B.*, 1 *P. & D.* 559), and this suit cannot be brought by the impotent person.

Marriages Abroad.—Lord Hardwicke's Act and the subsequent statutes in restraint of marriage above referred to only applying to England, the previous mixed Ecclesiastical and Common Law is still in force for British subjects outside England, except as altered by special colonial or Indian lesiglation, not merely prohibitory and negative, but creating a nullity by express words (*Catterall* v. *Sweetman*, 4 *N. C.* 222 and 5 *N. C.* 466); and it has been decided that, in places where it is difficult or impossible to procure an ordained parson, —e.g., up country in India,—the Common Law will recognize a contract '*per verba de presenti*' as a lawful marriage (*Maclean* v. *Cristall*, 7 *N. C. Supp. XVII.*). On this depends the validity of marriages solemnised in ambassadors' chapels, or before a British consul, or within British lines, or on board a man-of-war, or a merchant vessel, which are further validated by 4 Geo. IV. c. 91, and by s. 20 of 12 & 13 Vict. c. 68. The latter Act also provides for future marriages abroad before a British consul (authorised thereto by a Secretary of State), according to forms and conditions analogous to those prescribed by 6 & 7 Wm. IV. c. 85, except that there is no nullifying clause contained in 12 & 13 Vict. c. 68. Marriages on board men-of-war between British subjects are, except as therein provided, validated by 42 & 43 Vict. c. 29. As to marriages on board merchantmen, the master is, by s. 282 of 17 & 18 Vict. c. 104, required to enter certain particulars in the official log-book, and by s. 273 to send them in to the Board of Trade with the date thereof. As to colonial marriages, the General Imperial Act, 28 & 29 Vict. c. 64, gives the force of law, throughout the British dominions, to any act for validating marriages contracted in any of Her Majesty's possessions made by the legislature of those possessions, providing that both the parties are by the law of England competent to marry.

Foreign Marriages.—As to British subjects married in foreign Christian countries according to the forms and laws of those countries, the Common Law in ascertaining their validity is guided by the *lex loci contractus*, and if they are valid according to *lex loci contractus*, is wont to recognise them as valid in England, provided the parties, being incompetent to marry in England, have not married abroad to evade those restrictions. As to children legitimated in Scotland '*per subsequens matrimonium*,' the English law does not recognise them as legitimate so as to inherit realty (*Doe dem Birtwhistle* v. *Vardill*, 7 *C. & F.* 895); *aliter* as to personalty see *Goodman's Trusts*, 17 *Ch. D.* 266. The law of England will not recognise non-Christian, Mormon, or polygamous marriages. See *In re Bethell*, 38 *Ch. D.* 230.

Irregular Scotch Marriages.—The capacity to contract valid irregular marriages in Scotland is recognised, but restricted by

Lord Brougham's Act, 19 & 20 Vict. c. 96, for preventing Gretna Green marriages, by which, 'after 1856, no irregular marriage contracted in Scotland by declaration, etc., shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for 21 days next preceding such marriage.'

Irregular marriages can be contracted either *per verba de præsenti* or *per verba de futuro subsequente copula.* In the former case nothing more is necessary than a present interchange of consent, in whatever manner given, to become thenceforth husband and wife. Consummation is not required; the consent may be exchanged most secretly, the parties may never have lived together, but still the mutual *intention*, when proved, constitutes marriage. The so-called marriage by habit and repute, or by declaring themselves husband and wife before witnesses, is merely evidence of such intention—evidence which may be rebutted if it be proved that the real intention of the parties was contrary to their outward acts. See, e.g., the remarkable case where, in spite of an express public declaration before the woman's family by the man, 'Maggie, you are my wife, before heaven, so help me, O God!' it was held by the House of Lords, that no real marriage was then *intended* by either of the parties (*Stewart* v. *Robertson*, *L. R.* 2 *H. L. Sc.* 494).

The irregular marriage *per verba de futuro subsequente copula*—by promise, followed by cohabitation, to marry at a future time—differs from the irregular marriage *per verba de præsenti*, in the essential particular that it does not amount to a lawful marriage without having been declared so to be by special legal process or 'declarator,' whereas the marriage *per verba de præsenti*, if proved, amounts to a legal marriage without any such process. Moreover, the promise must either be proved by writing of the promisor, or by confession of it on oath. The result is that if the promise was not in writing the promise cannot be proved, and the marriage declared after the death of the promisor. Such appears to be the better opinion (see per *Lord Moncrieff* in *Burns* v. *Burns*, cited in the Report of the Marriage Commission, 1868), but the question is a very vexed one, and has not been the subject of express judicial decision. See further HUSBAND AND WIFE.

Marriage articles, an agreement in order to marriage; a stipulation between the parties which is to be binding in case of marriage.

Marriage brokage, a consideration paid for contriving a marriage, and illegal as contrary to public policy.

Marriage, Promise of, need not be in writing, although an 'agreement in consideration of marriage' must be, by s. 4 of the Statute of Frauds. In early times the spiritual Courts enforced specific performance of the promise, and this jurisdiction was not formally abolished until the reign of George II., by 26 Geo. II. c. 33. In an action for the breach of the promise, the parties were excepted (amongst others) from the general abolition of inadmissibility of parties as witnesses under 14 & 15 Vict. c. 99, s. 4, but this exception was removed by 32 & 33 Vict. c. 68, under which, however, the plaintiff may not 'recover a verdict,' unless his or her testimony be corroborated by some other material evidence in support of such promise.

Marriage settlement, an arrangement made before marriage, and in consideration of it (the highest consideration known to the law), whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. There is an express saving for such a settlement in s. 19 of the Married Women's Property Act, 1882 (see *post*, MARRIED WOMEN'S PROPERTY).

By 18 & 19 Vict. c. 43 (Malin's Act), a male of 20, or a female of 17, may make a binding marriage settlement.

By 20 & 21 Vict. c. 85, s. 45, the Divorce Court is empowered, in cases where a marriage has been dissolved, or a sentence of judicial separation has been pronounced, on the ground of the wife's adultery, to order such settlement, as it shall think reasonable, to be made of any property to which the wife is entitled, for the benefit of the innocent party, and of the children of the marriage, or any of them; and see 23 & 24 Vict. c. 144, s. 6, which provides that any instrument executed by the order of the Court under this enactment shall be deemed valid, notwithstanding coverture at the time of execution; and 41 Vict. c. 19, which allows the Court to revise a settlement, although there be no children of the marriage. By 22 & 23 Vict. c. 61, s. 5, the Court may, after a final decree of nullity, or dissolution of marriage, inquire into any ante-nuptial or post-nuptial settlements, and make such orders as to the application of the property settled, for the benefit of the children of the marriage or of their parents, as seem fit. See *Browne on Divorce*; *Dixon on Divorce*.

Married Woman. See HUSBAND AND WIFE.

Married Women's Property. At Common Law, a woman, by marrying, transferred the ownership of all her property, real and personal, present and future, to her husband

absolutely, so that he might sell, pay his debts out of, give away, or dispose by will of it as he pleased, with these exceptions and modifications :—

(1) Her freehold estate became his to manage and take the profits of during the two lives only. After his death, leaving her surviving, it passed to her absolutely; after her death, leaving him surviving, it passed to him as 'tenant by the curtesy of England,' during his life, and after his death to her heirs.

(2) Her leasehold estate, her personal estate in expectancy, and the debts owing to her and other 'choses in action,' became his absolutely if he did some act to appropriate or reduce them into possession during the marriage, or if he survived her. If he did not do such act, they passed to her absolutely if she survived him.

(3) Her personal clothing and ornaments suitable to her condition in life passed to her absolutely at her husband's death.

The almost complete control which the Common Law gave to the husband was much modified by the doctrines and practice of equity in fully recognising and giving effect to 'marriage settlements,' whereby the property of the wife is usually assigned to trustees in trust to pay her, for her separate use, all or part of the income during her life, and the capital after her death to such person as she may have appointed; and by compelling the husband to give the wife her 'equity to a settlement' by making a somewhat similar settlement of a proportion (usually one-half) of property coming to him in the right of his wife during the marriage.

But these protections of the wife's property not being deemed sufficient by the Legislature, the Married Women's Property Act, 1870, 33 & 34 Vict. c. 93 (amended in 1874 by 37 & 38 Vict. c. 50), enacted (*inter alia*) that the earnings of a married woman, and also her deposits in a savings bank, should be deemed her separate property; that a married woman might procure investments in the funds or in shares or stock to be made to stand in her own name as her separate property; and that personalty to any amount coming to any woman married *after the passing of the Act* (9th August, 1870], as next of kin of an intestate, and personalty up to 200*l.* coming to her under any deed or will should belong to her for her separate use.

A much greater step forward was taken by the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, which repeals and consolidates, with important amendments, the acts of 1870 and 1874. The 1st section of this Act provides that a married woman, whether married before the Act, or after it, (1) 'shall be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of a trustee'; (2) shall be capable of contracting so as to bind her separate property as if she were a *feme sole*; (3) shall *primâ facie* bind her separate property by her contracts; (4) shall so bind her after-acquired, as well as her existing separate property; and (5) shall, if trading separately, be subject to the laws of bankruptcy as if she were a *feme sole*.

The 2nd section applies only to women *who married after the commencement of the Act* (1st January, 1883), and enacts that every woman who marries after that date 'shall be entitled to have and to hold as her separate property, and to dispose of all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.'

By s. 3 any loans by the wife to the husband are to be treated as the husband's assets in case of his bankruptcy, with a reservation of the right of the wife to claim a dividend after all claims of other creditors have been satisfied.

The 5th section provides that property acquired *after the commencement* of the Act [1st January, 1883] by a woman married *before the commencement* of the Act, is to be held and be disposable by her as a *feme sole*.

By ss. 6—9 stock, etc., of any kind standing in the name of a married woman or of a married woman and another is exempted from any control by her husband, whose concurrence in the transfer of any such stock is dispensed with.

By s. 10 any investments by a wife of the moneys of her husband without his consent may be transferred to him by order of Court.

Section 19 contains a very important saving of 'marriage settlements.' It provides (with a qualification for ante-nuptial debts and rights of creditors) that 'nothing in this Act contained shall affect any settlement made or to be made, whether before or after marriage, respecting the property of any married woman,' or render inoperative 'any restriction against anticipation' [see ANTICIPATION] 'at present attached, or to be hereafter attached, to the enjoyment of any property or income by a woman under any settlement, agreement

for a settlement, will, or other instrument.' See further HUSBAND AND WIFE.

Marrow, author of a famous book, written in the reign of Henry VII., and said to be still in manuscript, on the office of a justice of the peace—a work which has been quoted by later writers, such as Fitzherbert and Lambard, with great commendation, and seems to have been followed by them on the subject. —4 *Reeves*, c. xxvii., p. 186.

Marshal, or **Mareschal**, primarily denotes an officer who has the care or command of horses.

An officer called a marshal attends each judge on the assizes (being paid by the treasury), and receives records for trials, etc. See 15 & 16 Vict. c. 73, s. 7; and Jud. Act, 1873, s. 77.

Marshal (Lord). See CHIVALRY, COURT OF.

Marshal of the Queen's Bench, an officer who had the custody of the Queen's Bench Prison. The 5 & 6 Vict. c. 22 abolished this office, and substituted an officer called Keeper of the Queen's Prison.

Marshalling, the act of arranging or of putting into proper order.

The doctrine of marshalling assets and securities depends upon the principle, that a person having two funds out of which to satisfy his demands, shall not, by his election, prejudice a person who has only one such fund. If, therefore, one who has a claim upon two funds, resorts to the only fund upon which another has a claim, the latter stands in his place for so much against the fund, to which otherwise he could not have access: the object being that every claimant shall be satisfied as far as, by any arrangement consistent with the nature of the several claims, the property which they seek to affect can be applied in satisfaction of such claims. This is in accordance with the great ethical maxim, *Sic utere tuo ut alienum non lædas* —so exercise your own right as not unnecessarily to prejudice that of your neighbour.

The doctrine, as exercised in the administration of deceased's assets, comprehends five different classes of persons:—

(1) Between creditors. Since freehold and copyhold estates have been rendered liable to simple contract debts, it is not now necessary to resort to this doctrine for the purpose of enforcing their payment.

(2) Between legatees. Where one or more legacies are charged upon real estate, and other legacies are not, if the personal estate prove insufficient to pay all, the legacies charged on the real estate shall be paid thereout; or if they have been paid out of the personal estate, the other legacies, as to so much as is thus paid thereout, shall stand in their place as a charge upon the land; but where the charge of a legacy upon a real estate fails to effect it, in consequence of an event happening subsequently to the death of the testator, as the death of the legatee before the time of payment, equity will not marshal so as to throw such legacy upon the personal estate, in which case it would be vested and transmissible, whereas, against the real, it would sink by the death of the legatee.

(3) Between creditors and legatees. Where there are specialty debts and legacies, and the real estate descends, if the creditors exhaust the personal estate the legatees stand in their place, and can come upon the real estate, against the heir-at-law. But if a testator devises his real estate, and gives general pecuniary legacies not charged on such real estate, and dies leaving specialty debts, and the specialty creditors exhaust the personal estate, the legatees shall not stand in their place and come on the realty, because it was the intention of the testator that the devisee should have the real estate as well as that the legatees should be paid. Nevertheless, where a mortgagee of a devised, as well as of a descended estate, has exhausted the personal assets by resorting to them in the first instance, a legatee shall stand in his place and be satisfied out of the mortgaged premises to the extent of the personalty applied in their exoneration; for the application of the personal assets in exoneration of the real estate mortgaged does not take place so as to defeat a legacy. A specific legatee will not be allowed to stand in the place of specialty creditors as against real estate devised, although the devisee be the heir. A devisee and a specific legatee must contribute *pro ratâ* to satisfy such specialty debts of a testator as his general personal estate is insufficient to pay. If land be devised for, or made subject to, the payments of debts, assets will be marshalled in favour of legatees, who will stand in the place of the creditors who may have been satisfied out of the personal assets. Where simple contract creditors exhaust the personal assets, the legatees may stand in their place as to the real estate descended.

(4) Between legatees and vendors. Where a vendor, having a lien upon land for the unpaid purchase-money, resorts to the personalty in the first instance for the realisation of his claim, the purchased estate, when it descends, and the personal assets will, as against the heir, be marshalled in favour of simple contract creditors and pecuniary legatees: but where the purchased estate is devised, then marshalling against the devisee will take place in favour of the simple contract creditors only, and not of legatees.

It is a general rule, that assets are not marshalled in favour of legacies given to charities. Thus, if a testator gives his real estate and personal estate, consisting of personalty savouring of realty, as leaseholds and mortgage securities, and also pure personalty, to trustees, upon trust to sell, and pay his debts and legacies, and bequeaths the residue to a charity, equity will not marshal the assets by throwing the debts and ordinary legacies upon the proceeds of the real estate, and the personalty savouring of the realty, in order to leave the pure personalty for the charity.

(5) Between widows and legatees. A widow's paraphernalia (the necessary wearing apparel excepted) are liable for her deceased husband's debts: but a widow being preferred to a general legatee, she is entitled to marshal assets in those cases in which a general legatee would be entitled to do so, i.e., as against realty descended or devised, should it be subjected by the will to the payment of debts. If a devised estate be subject to a mortgage or other specific incumbrance, the widow will be entitled to marshal the assets as against the devisee, by throwing the charge upon the estate, since a legatee would have that right.

By 32 & 33 Vict. c. 46, the distinction as to priority of payment between the specialty and simple contract debts is abolished.

In the administration by the Court of the assets of any person dying insolvent after the commencement of the Judicature Acts, the rules prevailing in the Court of Bankruptcy are to prevail (Jud. Act, 1875, s. 10). See DEBTS.

Marshalling court armour has now fallen into the hands of the heralds.

Marshalsea, Court of the, originally held before the steward and marshal of the royal house, to administer justice between the sovereign's domestic servants, that they might not be drawn into other courts, and their service become lost. It held pleas of all trespasses committed within the verge of the court (twelve miles round the sovereign's residence), where only one of the parties was in the royal service (in which case the inquest was taken by a jury of the country); and of all debts, contracts, and covenants where both of the contracting parties belonged to the royal household, and then the inquest was composed of men of the household only. But this court being ambulatory, Charles I. erected a new Court of record, called the *curia palatii*, or palace court, to be held before the steward of the household and knight marshal, and the steward of the Court or his deputy, with jurisdiction to hold plea of all manner of personal actions whatsoever which should arise between any parties within twelve miles of the royal palace at Whitehall, not including the city of London.

The Court was held once a week for causes under 20*l.*, together with the ancient Court of Marshalsea, in the borough of Southwark, and a writ of error lay thence to the Court of Queen's Bench. Abolished by 12 & 13 Vict. c. 101, s. 13.

Marshalsea Prison. By 5 & 6 Vict. c. 22, amended by 11 & 12 Vict. c. 7, this prison is consolidated with others, and denominated the Queen's Prison, which see. As to the *Four Courts Marshalsea (Dublin) Prison*, see 37 & 38 Vict. c. 21, discontinuing the same.

Mart [contracted fr. *market*], a place of public traffic or sale.

Martial, Courts. See COURTS MARTIAL, and *Simmons* or *Finlason on Courts Martial*, 30; *Thring's Criminal Law of the Navy*. As to the more speedy trial of a person subject to the Army Act, who may be guilty of the murder or manslaughter of a person subject to that Act, see 25 & 26 Vict. c. 65.

Martial law, that rule of action which is imposed by the military power. See MARTIAL, COURTS.

Martinmas, the feast of St. Martin of Tours, on the 11th November; sometimes corrupted into *martilmas* or *martlemas*. It is the third of the four cross quarter-days of the year.

Martyria, a figure of rhetoric, by which the speaker brings his own experience in proof of what he advances.

Masagium, a messuage.

Masculine, of the male sex. Statutes passed prior to 1850 frequently declare that words in them which import the masculine gender shall be deemed to include females, unless there is something in the Act inconsistent therewith. In 1850, by 13 & 14 Vict. c. 21, s. 4, this provision was made general so as to dispense with its repetition with each particular case in future, and in 1889, the Interpretation Act, 1889 (see that title) repealed and re-enacted the provision.

Master [fr. *meester*, Dut.; *maistre*, Fr.; *magister*, Lat.], a director; a governor; a teacher; one who has servants; the head of a college; the chief functionaries of courts of law. See MASTER OF A SHIP.

Master and Servant, a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose.

Servants are of several descriptions:—1st, Servants in husbandry. These are very generally hired by the year, as from Michaelmas to Michaelmas, and this is an entire hiring for a year; and, unless otherwise stipulated, no

wages are payable until the end of the year. Consult *Burn's Justice*, tit. '*Servants*.'

2nd. Servants in particular trades. These are also subject to the control of the magistrates, under several Acts, some of them confined to particular trades, as the silk, cloth, woollen, linen, fustian, cotton, iron, leather, hat, lace, clock, paper, tailoring, shoemaking, and other trades; and disputes between master and servants in husbandry, artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glass-blowers, and other labourers in general, are regulated by several more general Acts. They will be found collected in *Chitty's Statutes*, vol. iv., tit. '*Master and Servant*."

3rd. Apprentices. These are placed with the master to learn his trade, with a view hereafter of following it themselves. See APPRENTICE.

4th. Menial or domestic servants. If no terms be stipulated, it is considered a hiring with reference to the general understanding on the subject, that is, a continuing service, until the expiration of a month's warning given by either party.

It is not legally compulsory on a master or mistress to give a discharged servant any character, and no action is sustainable for the refusal; but if a character be given, it must accord with the truth; for if a false good character be given, and the servant afterwards rob his new master, the person who gave such false character is liable to an action, and to compensate for the entire loss; and he is liable to punishment in certain cases of false character under 32 Geo. III. c. 56. And if a bad character be untruly and maliciously given, the party giving it will be liable to an action for defamation, though, until the untruth of the character given and express malice have been proved, the communication is presumed to have been privileged, and no action is sustainable.

A master is liable civilly for torts committed by his servant in the course of or under colour of his employ, but not for any wilful misfeasance of the servant. To this general liability the Common Law, as laid down in *Priestly* v. *Fowler*, 3 *M. S. W.* 1, made the important exception that the master was not liable to a servant for the tort of a 'fellow-servant,' a term to which a very comprehensive meaning, so as to include a foreman, was given by the cases. But the Employers' Liability Act, 1880, 43 & 44 Vict. c. 42, a temporary Act, now continued by 54 & 55 Vict. c. 58, until December 31st, 1892, has much modified this exception. The not providing with food, etc., or ill-treatment of a servant by his master, is an indictable offence under 24 & 25 Vict. c. 120, s. 26, and an offence punishable on summary conviction by a fine of 20*l.* or six months' imprisonment with or without hard labour under the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, s. 6.

The offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of giving the same to horses or other animals of such master, which was a felony at Common Law, is no longer a felony, but is punishable upon summary conviction by fine or imprisonment, by 26 & 27 Vict. c. 103.

Disputes between masters and servants, and attempts to compel servants and workmen to combine in opposition to masters, have been the subject of much recent legislation. In 1867 the Masters and Servants Act of that year (30 & 31 Vict. c. 141) provided various remedies by summary process for breaches of contract between masters and servants. This Act, however, with a large number of earlier Acts on the subject, has been repealed by the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), which also repeals the 34 & 35 Vict. c. 32, which was passed to amend the law relating to violence, threats, and intimidation. The Act of 1875 provides, that in trade disputes no agreement or combination shall be indictable unless the Act contemplated would be indictable if done by one person (s. 1); while it also makes special criminal provisions in the case of persons employed by gas and water companies (s. 2). It imposes penalties on masters for not taking proper care of their servants (s. 6), and on persons intimidating or using threats or violence to others (s. 7); and provides for a summary process in such cases (s. 10), with an appeal to quarter sessions (s. 12).

By the Acts 5 Geo. IV. c. 96, 30 & 31 Vict. c. 105, and 35 & 36 Vict. c. 46, provision was made for modes of arbitration between workmen and their employers in case of trade disputes. And by the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), special powers are given to County Courts as to ordering payment of money, set-off, and rescission of contracts, and taking securities for performance of contracts in trade disputes between employers and workmen (s. 3). And the same jurisdiction is given to justices by the Act, up to the value of 10*l.* (s. 4), which extends also to disputes between masters and apprentices (ss. 5, 6).

Consult *Manley Smith*, or *Macdonell* on the law of master and servant.

Masters in Chancery, officers of the High Court of Chancery. They were either ordi-

nary or extraordinary. Abolished by 15 & 16 Vict. c. 80. See CHIEF CLERKS; COMMISSIONERS TO ADMINISTER OATHS; and TAXING MASTERS.

Masters in Lunacy. See 16 & 27 Vict. c. 70, and LUNACY.

Masters of the Common Law Courts. There were five masters on the plea side of each of the Courts of Queen's Bench and Exchequer, and also in the Common Pleas. They were appointed by 7 Wm. IV. and 1 Vict. c. 30, and their duties were to tax costs, compute damages, attend the judges in court, etc. These officers became, under the Judicature Acts, officers of the Supreme Court, and were attached to the Division of the High Court representing the Court to which they formerly belonged (Jud. Act, 1873, s. 77; Jud. Act, 1875, Ord. LX., r. 1). Under 30 & 31 Vict. c. 68, and the General Rules of Michaelmas Term, 1867, the Masters transacted a considerable portion of the business at Judges' Chambers; and they have similar powers under the Rules of the Supreme Court (R. S. C. 1883, Ord. LIV., r. 12).

Masters of the Supreme Court. Officials deriving their title from the Jud. (Officers) Act, 1879, and being, or filling the places of, the sixteen Masters of the Common Law Courts, the Queen's Coroner and Attorney, the Master of the Crown Office, the two Record and Writ Clerks, and the three Associates.

Master of the Crown Office, the Queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecuted at the relation of some private person or common informer; the Crown being the nominal prosecutor.—6 & 7 *Vict.* c. 20. He is now an officer of the Supreme Court; see last title. See CROWN OFFICE.

Master of the Faculties, an officer under the archbishop, who grants licenses and dispensations, etc. See 37 & 38 Vict. c. 85, s. 7; and ARCHES COURT, and PUBLIC WORSHIP REGULATION ACT, 1874.

Master of the Horse, the third great officer of the royal household, being next to the Lord Steward and Lord Chamberlain. He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

Master of the Mint, an officer who receives bullion for coinage, and pays for it and superintends everything belonging to the mint. He is usually called the warden of the mint. It is provided by the 33 Vict. c. 10, s. 14, that the Chancellor of the Exchequer for the time being shall be the Master of the Mint.

Master of the Ordnance, a great officer, to whose care all the royal ordnance and artillery were committed.—39 *Eliz.* c. 7. But see 18 & 19 Vict. c. 117.

Master of Reports and Entries. This Chancery official was not to be continued after the next vacancy occurring after the Act, 18 & 19 Vict. c. 134.

Master of the Rolls [*magister rotulorum*, Lat.], the chief of a body of officers called the Masters in Chancery, of whom there were eleven others, including the Accountant-General. He was a judge of the Equity Court, which ranked next to that of the Lord Chancellor, and has the keeping of the rolls and grants which pass the Great Seal, and the records of the Chancery. All orders and decrees by him made, except such as by the course of the Court were appropriated to the Great Seal alone, were deemed to be valid, subject, nevertheless, to be discharged or altered by the Lord Chancellor, and were not enrolled till they were signed by the Lord Chancellor.—3 *Geo. II.* c. 30.

This judge, by the Jud. Act, 1881, s. 2, sits in the Court of Appeal only. Before that act he was the second judge of the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 31 (1)), and also an *ex officio* judge of the Court of Appeal (Jud. Act, 1875, s. 4). Before the Jud. Acts he was (alone among the judges) allowed to sit in the House of Commons.

Master of a ship [*magister navis*, Lat.], the person intrusted with the care and navigation of a ship, possessing what foreign jurists have called exercitatorial power over her. See *Maud & Pollock on Shipping.*

Master of the Temple, the chief ecclesiastical functionary of the Temple Church.

Masura, a decayed house; a wall; the ruins of a building; a certain quantity of lands about four oxgangs.—*Old Records.*

Mate, the deputy of the master in a merchant ship. There are sometimes one, sometimes two, three, or four.

Matelotage [fr. *matelot*, Fr.], the hire of a ship or boat.—*Cole.*

Mater-familias, the mother or mistress of a family.—*Civ. Law.*

Matertera, a maternal aunt; the sister of one's mother.

Matertera magna, a great maternal aunt.

Math, a mowing.

Matricide, slaughter of a mother. 2. One who has slain his mother.

Matricula, a register of the admission of officers and persons entered into any body or society, whereof a list is made; hence those who are admitted into our universities are said to be matriculated. The stamp-duties on matriculations at Oxford are repealed by

18 & 19 Vict, c. 36, s. 1; and at Cambridge by 22 Vict. c. 11. It was also a kind of alms-house, which had revenues appropriated to it, and was usually built near the church, whence the name was given to the church itself.—*Encyc. Lond.*

Matriculate (*v.n.*), to enter an university.

Matrimonia debent esse libera. Halkerston, 86.—(Marriages ought to be free.)

Matrimonial causes, suits for the redress of injuries respecting the rights of marriage. They were formerly a branch of the ecclesiastical jurisdiction, but were transferred to the jurisdiction of the Court for Divorce and Matrimonial Causes (now a branch of the High Court of Justice), by 20 & 21 Vict. c. 85.

They are either for:—(1) Restitution of conjugal rights, (2) Judicial separation, or (3) dissolution of marriage.

Matrimonial Causes Acts, 1857 to 1873. The 36 Vict. c. 31, s. 2, provides that that Act, together with the 20 & 21 Vict. c. 85; 21 & 22 Vict. c. 108; 22 & 23 Vict. c. 61; 23 & 24 Vict. c. 144; 29 & 30 Vict. c. 32; 31 & 32 Vict. c. 77; may be cited as 'The Matrimonial Causes Acts, 1857 to 1873.' See these acts, *Chitty's Statutes*, vol. iv., tit. '*Matrimonial Causes*,' and consult *Browne* or *Dixon on Divorce and Matrimonial Causes.*

Matrimonium, the inheritance descending to a man *ex parte matris* (*from his mother*).

Matrimonium subsequens tollit peccatum præcedens. Jur. Civ.—(Subsequent marriage cures preceding criminality.)

Matrimony, marriage; the nuptial state; the contract of man and wife. See titles MARRIAGE, and HUSBAND AND WIFE.

Matrina, a godmother.

Matrix Ecclesia, the mother church, i.e., the cathedral so called in relation to the parochial churches within the same diocese, or a parochial church in relation to chapels depending on it.—*Leg. Hen. I.* c. 19.

Matron, a married woman; a mother of a family.

Matron of Queen's Prison. See 5 & 6 Vict. c. 22, s. 22.

Matrons, Jury of. Such a jury is empannelled to try if a woman condemned to death be with child. See JURY-WOMEN.

Matter in ley ne serra mise in boutche del jurors. Jenk. Cent. 180.—(Matter of law shall not be put into the mouth of the jurors.)

Maturiora sunt vota mulierum quam virorum. 6 Co. 71.—(The desires of women are more mature than those of men, i.e., women arrive at maturity earlier than men.)

Maturity, the time when a bill of exchange or promissory note becomes due.

Maundy Thursday [fr. *maund*, Sax., an alms-basket, or *dies mandati*, Lat., the day of the command], the day preceding Good Friday, on which princes give alms.

Maxim [fr. *maximum*, Lat.], an axiom; a general principle; a leading truth; so called, says Coke, *quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur.*—1 *Inst.* 11. Consult *Broom's Legal Maxims;* and see a very full collection in *Bouvier's Law Dictionary*, tit. '*Maxim.*' In the present work each maxim is explained separately under its alphabetical title. See therefore CAVEAT EMPTOR, *Nemo tenetur prodere se ipsum*, etc., etc.

Maxima ita dicta quia maxima est ejus dignitas et certissima, auctoritas, atque quod maxime omnibus probetur. Co. Litt. 11.—(A maxim is so called because its dignity is greatest, and its authority the most certain, and because universally approved by all.)

Mayhem, the deprivation of a member proper for defence in fight, as an arm, leg, finger, eye, or a fore-tooth; yet not a jaw-tooth, or an ear, or a nose, because they have been supposed to be of no use in fighting. One circumstance peculiar to an action for mayhem was that the Court might, on view of the wound, increase the damages awarded by the jury.—3 *Salk.* 115. See 24 & 25 Vict. c. 100. ss. 18, 29; and *ante*, MACHEMIUM.

Mayhemavit (*he has maimed*).

Maynooth, St. Patrick's College at. See 8 & 9 Vict. c. 25, and the 32 & 33 Vict. c. 40, s. 40, repealing the same, except as to the first three sections, and repealing also 23 & 24 Vict. c. 104.

Mayor [according to some anciently written *meyr*, fr. the British *miret*, to keep, or fr. the old English *maier*, power, not from the Latin *major*], the annual chief magistrate of a municipal borough, elected by the councillors under s. 15 of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, 'from among the aldermen or councillors, or persons qualified to be such,' on the 9th November of every year (Ib. s. 61). He receives little salary, if any. His principal duties are to act as returning officer at parliamentary and municipal elections, as chairman of the meetings of the council, and as a justice of the peace for the borough.

Mayor, Aldermen, and Burgesses, the name of a municipal corporation of a borough to which the Municipal Corporations Act, 1882, applies; see s. 8 of that Act (by which 'citizens' is substituted for 'burgesses' in the case of a city), re-enacting part of s. 6 of the Municipal Corporations Act, 1835.

Mayor's Court, London. See LORD MAYOR'S COURT.

Mayoralty, the office of a mayor.

Mayoress, the wife of a mayor.

Mead, or **Meadow** [fr. *mæde*, Sax.], ground somewhat watery, not ploughed, but covered with grass and flowers.—*Encyc. Lond.*

Meal-rent, a rent formerly paid in meal.—*Phillips.*

Mean, or **mesne** [fr. *medius*, Lat.], a middle between two extremes, whether applied to persons, things, or time. See MESNE.

Mease [fr. *messuagium*, Lat.], a messuage or dwelling-house, *F. N. B.* 2; also half of a thousand.

Meason-due [corruption of *maison de Dieu*, Fr.], a house of God; a monastery; religious house or hospital. See 39 Eliz. c. 5.

Measure [fr. *mensura*, Lat.], that by which anything is measured, the rule by which anything is adjusted or proportioned. See WEIGHTS AND MEASURES.

Measure of damage, the test which determines the amount of damages to be given. There are excellent books on the subject by *Mayne* and *Sedgwick.*

Measurer, or **Meter**, an officer in the City of London, who measured woollen cloths, coals, etc. See ALNAGER.

Measuring money, a duty which some persons exacted, by letters-patent, for every piece of cloth made, besides alnage. It is abolished.

Meat unsound. See *Unsound Food.*

Mederia, a house or place where metheglin or mead was made.—*Old Records.*

Medfee, a reward; a bribe; that which is given to boot.—*Scott.*

Mediæ et infimæ manus homines, men of a middle and base condition.—*Blount.*

Medianus homo, a man of middle fortune.

Mediate testimony, secondary evidence, which see.

Mediators of questions, six persons authorised by statute, who, upon any question arising among merchants, relating to unmerchantable wool, or undue packing, etc., might, before the mayor and officers of the staple, upon their oath, certify and settle the same; to whose determination therein the parties concerned were to submit.—27 *Edw. III.* st. 2, c. 24.

Medical Act, 21 & 22 Vict. c. 90, amended by 22 Vict. c. 21; 23 Vict. c. 7; 23 & 24 Vict. c. 66; 31 & 32 Vict. c. 29; 36 & 37 Vict. c. 55; 38 & 39 Vict. c. 43; and 49 & 50 Vict. c. 48. By s. 32 of 21 & 22 Vict. c. 90, only a registered medical practitioner can sue for his charges, and by s. 6 of 49 & 50 Vict. c. 48, a fellow of a College of Physicians may be prohibited by bye-law of the college from suing; and such bye-law has been passed. See *Gibbon* v. *Budd*, 2 *H. & C.* 92. The College of Physicians, with other bodies, was empowered to grant qualifications for registration to *women* by 39 & 40 Vict. c. 41. See also APOTHECARIES AND SURGEONS.

Medical Education Council Act, 25 & 26 Vict. c. 91, amended by 49 & 50 Vict. c. 48.

Medical jurisprudence, forensic medicine, which see.

Medical Officer of Health. Under the Public Health Act, 1875, s. 189, each urban authority and (by s. 190) each *rural* authority must appoint such an officer, and may make regulations as to his duties; and by s. 17 of the Local Government Act, 1888, each County Council may appoint such an officer.

Medical witnesses, may be ordered to attend at an inquest by the coroner under 6 & 7 Wm. IV. c. 89.

For some valuable hints as to the conduct of medical witnesses, consult *Beck's Med. Jur.*, tit. '*Medical Evidence*,' and *Taylor's Med. Jur.*

Medicine, adulteration of, see ADULTERATION.

Medico-legal [*medico-legalis*, Lat.], relating to the law concerning medical questions.

Medietas linguæ. See DE MEDIETATE LINGUÆ.

Medio acquietando, a judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him.—*Reg. Jur.* 129.

Meditatio fugæ. A debtor *in meditatione fugæ* (meditating flight) may, by the law of Scotland, be arrested by warrant obtained for that purpose.—*Scotch Law.* See ARREST ON MESNE PROCESS.

Medlefe, Medleta, Medletum [fr. *mêler*, Fr., to meddle], a sudden scolding at and beating one another.—*Bract.* 1, 3, c. XXXV.

Med-sceat, a bribe; hush money.—*Anc. Inst. Eng.*

Medsypp, a harvest supper or entertainment given to labourers at harvest-home.—*Cowel.*

Meeting, an assembly of persons whose consent is required for anything to decide by a proper majority of votes, whether or not that thing shall be done; e.g., the meeting of the town council under s. 22 of the Municipal Corporations Act, 1882, or of the shareholders of a company under ss. 66—80 of the Companies' Clauses Consolidation Act, 1845, or of the inhabitant ratepayers of a parish in 'vestry' under 58 Geo. III., c. 69. And see also PUBLIC MEETING.

Meeting-house Act, the 7 & 8 Vict. c. 45.

Megbote, a recompense for the murder of a relation.—*Saxon word.*

Meigne, or **Maisnader**, a family.

Meiny, Meine, or **Meinie,** the royal household; a retinue.

Meldfeoh, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (i.e., informer's) fee.

Melieur serra prize pour le roy.—Jenk. Cent. 192.—(The best shall be taken for the king.)

Melior dabit nomen rei. Bacon.—(The better will give a name to a thing.)

Melior est conditio defendentis.—(The condition of the party in possession is the better one, i.e., where the right of the parties is equal.) See *Broom's Max.*, 5th ed., 715, 719.

Melior est conditio possidentis, et rei quam actoris. 4 Inst. 180.—(The condition of the possessor is the better, and the condition of the defendant than that of the plaintiff.)

Melior est conditio possidentis ubi neuter jus habet. Jenk. Cent. 118.—(The condition of the possessor is the better where neither of the two has a right.) See POSSESSION IS NINE-TENTHS OF THE LAW.

Melior est justitia vère præveniens, quam severè puniens. 3 Inst. Epil.—(Justice truly preventing is better than severely punishing.)

Meliorations, improvements.—*Scotch term.*

Meliorem conditionem ecclesiæ suæ facere potest prælatus deteriorem nequaquam. Co. Litt. 101.—(A bishop can make the condition of his own church better, but by no means worse.)

Meliorem conditionem suam facere potest minor deteriorem nequaquam. Co. Litt. 337.—(A minor can make his own condition better, but by no means worse.)

Melius est omnia mala pati quam malo consentire. 3 Inst. 23.—(It is better to suffer every ill than to consent to ill.)

Melius est petere fontes quam sectari rivulos.—(It is better to go to the fountain head than to follow little streamlets.)

Melius inquirendum, a writ that lay for a second inquiry, where partial dealing was suspected; and particularly of what lands or tenements a man died seised, on finding an office for the king.—*F. N. B.* 255. For instance of a second inquiry before a coroner, see *Reg.* v. *Carter*, 45 *L. J. Q. B.* 711, and for express legalization of such inquiry, see Coroners Act, 1887, 50 & 51 Vict. c. 71, s. 6.

Members, places where anciently a custom house was kept, with officers or deputies in attendance. They were lawful places of exportation or importation.—*Beawes' Lex. Mer.*, 6th. ed. vol. i., p. 246.

Members of Parliament. See HOUSE OF LORDS AND HOUSE of COMMONS.

Membrum, a slip or small piece of land.

Memorandum of Association, a document required by s. 8 of the Companies Act, 1862, 25 & 26 Vict. c. 89, from every joint stock company comprised within that Act, to contain the name thereof, its objects, etc. See *Association, Memorandum of.*

Memorandum in error, was a document alleging error in fact, accompanied by an affidavit of such matter of fact.—15 & 16 *Vict.* c. 76, s. 158. See ERROR.

Memorial, that which contains the particulars of a deed, etc., and is the instrument registered, as in the case of an annuity which must be registered.

Memory, Time of Legal. By Statute Westminster the First, 3 Edw. I., A.D. 1276, the time of memory was limited to the reign of Richard I., July 6, 1189. But see the Prescription Act, 2 & 3 Wm. IV. c. 71.

Menace, a threat. By 24 & 25 Vict. c. 96, s. 45, it is made felony to demand with menaces property, money, etc., with intent to steal; and see THREATS, and also title MASTER AND SERVANT.

Menagium, a family.—*Wals.* p. 66.

Mendlefe. See MEDLEFE.

Menials [fr. *mænia*, Lat., walls], those servants who live within their master's walls.—*Termes de la Ley.*

Mensa, patrimony, or goods, and necessary things for livelihood.—*Jacob.*

Mensa et thoro, Divorce à. Superseded by a judicial separation. See A MENSA ET THORO, and MARRIAGE.

Mensalia, personages or spiritual livings united to the tables of religious houses, and called *mensal benefices* amongst the canonists.—*Cowel.*

Mensura domini regis, or **Mensura regalis,** the royal standard measure, which was kept in the Exchequer, according to which all measures were to be made. But see MEASURE.

Mental reservation, a silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise.

Mepris, neglect; contempt.

Mer or **Mere,** a fenny place.—*Cowel.*

Mera noctis, midnight.—*Cowel.*

Merannum, timbers; wood for building.—*Old Records.*

Mercable [fr. *mercor*, Lat.], to be sold or bought.

Mercantile Law Amendment Act, 1856, 19 & 20 Vict. c. 97. Its principal enactments are: (1) that a writ of execution shall not

affect a title *bonâ fide* acquired before seizure; (2) that in an action for breach of contract to deliver goods sold, a writ for delivery of the goods may be obtained; (3) that the consideration for a guarantee need not appear in writing; (4) that a guarantee to or for a firm ceases upon a change in the firm; (5) that a surety who discharges a liability is to be entitled to an assignment of all securities held by the creditor; (6 & 7) that an acceptance of a bill of exchange must be in writing; (8) that as to repairs of ships, every port in the United Kingdom is to be deemed a home port; (9) that actions for merchants' accounts must be brought in six years; (10) that absence beyond seas is no disability within the Statute of Limitations; and (11) that part payment by one contractor is not to prevent the bar by the Statute of Limitations in favour of another contractor.

Mercat [fr. *mercatus*, Lat.], market; trade.

Mercative, belonging to trade.

Mercature, the practice of buying and selling.

Mercedary [fr. *mercedula*, Lat., a small fee], one that hires.

Mercenarius, a hireling or servant.—*Jacob.*

Mercen-lage, the Mercian laws, which were observed in many of the midland counties, and those bordering on the Principality of Wales, the retreat of the Ancient Britons.

Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28. See TRADE MARKS.

Merchant [fr. *marchand*, Fr.], one who traffics to remote countries; also, any one dealing in the purchase and sale of goods. See *Josselyn* v. *Parson*, *L. R.* 7 *Exch.* 127.

Merchants' accounts. The period of limitation of action for the recovery of the same is six years. See MERCANTILE LAW AMENDMENT ACT, 19 & 20 Vict. c. 97, s. 9, *supra*.

Merchant Shipping Acts, 17 & 18 Vict. c. 104, amended by 18 & 19 Vict. c. 91; 25 & 26 Vict. c. 63; 30 & 31 Vict. c. 124; 34 & 35 Vict. c. 110; 35 & 36 Vict. c. 73; 36 & 37 Vict. c. 85; 37 & 38 Vict. c. 51; 38 & 39 Vict. c. 88 (repealed and replaced by 39 & 40 Vict. c. 80); 39 & 40 Vict. c. 80 (detention of unseaworthy ships); 42 & 43 Vict. c. 72 (investigation of shipping casualties); 43 & 44 Vict. c. 16 (payment of wages and rating); 43 & 44 Vict. c. 18 (numbers of joint owners of ships); 43 & 44 Vict. c. 22 (fees and expenses); 43 & 44 Vict. c. 43 (carriage of grain); 46 & 47 Vict. c. 41 (fishing boats); and by 51 & 52 Vict. c. 24 (life-saving appliances); and see *Maude & Pollock on Shipping; Chitty's Statutes*, vol. v., tit. '*Shipping*.'

Merchants, Statute of, 13 Edw. I. st. 3, repealed by 26 & 27 Vict. c. 125.

Merchet, a fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage.—*Cowel.* See *Kennet's Gloss*, voce '*Maritagium*.'

Merciament, an amerciament, penalty, or fine.

Mercimoniatus Angliæ, the impost of England upon merchandise.—*Cowel.*

Mercy, Recommendation to. It has for many years been common for a jury in finding a prisoner guilty, especially where the crime is murder, to accompany their verdict by a recommendation of the prisoner to the mercy of the Crown on certain named grounds. Such a recommendation has no legal effect whatever, but is usually attended to. Convicts, however, have been hanged in spite of it.

Merger [fr. *mergo*, Lat., to sink], an annihilation, by act of law, of a particular in an expectant estate consequent upon their union in the same person—thus accelerating into possession the expectant which swallows up the particular estate. It is the drowning of one estate in another, and differs from suspension, which is but a partial extinguishment for a time; while extinguishment, properly so termed, is the destruction of a collateral thing in the subject itself out of which it is derived.

The doctrine of merger probably results from the maxim—*nemo potest esse dominus et tenens*; or perhaps from the inconsistency, but for it, of one person owning two estates in fact, whilst one of them, in law, includes the time or duration of both. 'Perhaps,' remarks Preston (3 *Conv.* 22), 'the rule that *nemo potest esse dominus et tenens* does not clearly, and beyond all controversy, furnish a principle to which the learning can be exclusively referred; yet of all other rules none affords principles to which the cases on merger bear a nearer affinity.'

When the same person has the legal estate in the fee, and is also entitled to the trust or beneficial ownership of that estate, the trust will merge in the legal ownership, but, on the other hand, the legal estate can never be extinguished in the equitable ownership.

Merger is either absolute or qualified, for, as we shall presently see, an estate as against one person may be extinguished, whilst as against another it may still have existence.

In order to effect a merger, the following circumstances must concur:—

(1) There must of necessity be two estates at least in the same property, or in the same part of the same property, which must vest in the same person.

Merger, however, will operate between three or more estates, as well as between two.

(2) The several estates must be immediately expectant upon each other; the more remote estate must be without any intervening vested estate or contingent remainder created in the same instant of time and by the same means, which originated the other estates; and the determination or acquisition of an intermediate estate may be the cause of merger, as between estates kept distinct by means of such intermediate estate.

(3) The estate in reversion or remainder must be larger than the preceding estate, for there cannot be a merger as between equal estates of freehold.

With regard to the merger of terms for years in each other, the following propositions may be advanced:—

A term of years derived by way of underlease from a term of years, will merge on the two terms becoming possessed by one and the same person.

An estate for years may also merge in another estate in reversion of the same denomination, and it does not make any difference, whether the reversion is for a longer or shorter period of time than the former or preceding term; therefore, a term in possession, though for a hundred years, will be annihilated by its union with the term in reversion though for two years only. With a view, then, to the doctrine of merger, every term of years is equally extensive in quality at least.

The merger of a longer term in one of shorter duration may be accounted for on the ground that it is merely a relinquishment of the tenancy or rather possession to the person who has the immediate reversion, or, perhaps, remainder.

It is to be observed that both terms must be vested in interest to operate a merger of one of them. See 8 & 9 Vict. c. 112.

(4) The several estates must be held in the same legal right; or, when the estates are held in different legal rights, one of them must not be an accession to the other, merely by the operation of law.

The proposition insisted on by some text writers, that the two estates must come to one and the same person in one and the same right, is not tenable, for it is clear that if a husband, possessed in right of his wife, purchase the reversion or remainder, or if an executor have a term in his testator's right and purchase the reversion, in either instance the term will merge, and yet the husband or executor has the term in one right, and the fee in another. The ground, however, of these cases is that the reversion or remainder was acquired by the party *by his own act.*

The grand effect of merger is, as between the particular tenant whose estate is annihilated, and the reversioner or remainder-man, to bring the reversion or remainder into the same place and condition, as if the particular estate had never existed, or had determined by completing the period of its duration; nevertheless the particular estate is, for all the purposes of title, to be treated as still subsisting and continuing; and all charges, by way of rent, annuity, underlease, or judgment, are preserved in like manner and for the same time as if such extinguished particular estate were in fact in existence, so that the accelerated reversion or remainder is subjected as well to its own peculiar incumbrances as to the charges upon the merged estate, *quoad* its originally destined endurance. And see 8 & 9 Vict. c. 106, s. 9.

It is to be particularly remarked, that where A., a tenant-in-tail, whether in possession or not, with remainder or reversion to B. in fee, there being a protector of the settlement, makes an assurance by virtue of the 3 & 4 Wm. IV. c. 74, which, by reason of the non-consent of the protector, is insufficient to bar the remainder or reversion, such assurance bars the issue in tail, and acquires a fee determinable on failure of such issue, but does not divest or displace the remainder or reversion, which, therefore, continues to subsist as an estate expectant on the determinable fee. If, by any means, the remainder or reversion of B. become afterwards vested in A., the determinable fee does not merge in the remainder or reversion, as upon ordinary principles it would have done, but by the express provisions of the Act is *enlarged*, and A. has thenceforth a clear fee simple, founded, in point of title, upon the estate-tail.—3 & 4 *Wm. IV.* c. 74, s. 49.

Owners of both lands and tithes, even tenants for life, are empowered to merge tithes in the lands.—6 & 7 *Wm. IV.* c. 71, ss. 71, 81, etc.; and see also 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 62, ss. 1, 6, 7; 9 & 10 Vict. c. 73, ss. 18—20.

By the Judicature Act, 1873, s. 25 (4), it is provided that there shall not, after the commencement of that Act, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

When an engagement has been made by simple contract, and then the same engagement is made by deed, the simple contract is merged and extinguished in the deed.

Merger, in criminal law, is abolished by 14 & 15 Vict. c. 100, s. 12.

Meritorious consideration, one founded

upon some moral obligation; a valuable consideration in the second degree.

Merits, Affidavit of. This instrument is necessary when a defendant seeks to set aside, for irregularity, a judgment signed or other proceeding. The term 'merits,' in an affidavit of this nature, is to be read in a technical sense, and is not to be understood to be confined to strictly moral and conscientious defences; and defences of the Statute of Frauds or of Limitations, and of Bankruptcy and Infancy, are defences on the merits.—2 *Chit. Arch. Prac.*

Mero Motu. See EX MERO MOTU.

Merscum, a lake; also a marsh or fen-land.

Merse-ware, the ancient name for the inhabitants of Romney Marsh, Kent.—*Cowel.*

Mersey. As to collisions in the sea channels leading to the Mersey, see 37 & 38 Vict. c. 52.

Mertlage, a church calendar or rubric.—*Cowel.*

Merton, Statute of, 20 Hen. III. c. 4, A.D. 1235, so called because it was enacted at the Priory of Merton, in Surrey. Its principal unrepealed provisions (1) allow the inclosure or 'approvement' of commons by lords of manors, provided that the freeholders have sufficient pasture; (2) declare the illegitimacy of children born before marriage; and (3) allow the appointment of attorneys. See BASTARD; INCLOSURE; SOLICITOR.

Mescroyants, unbelievers.

Mese, a house and its appurtenances.—*Cowel.*

Mesnality, a manor held under a superior lord.

Mesnalty, the right of the mesne.—*Cowel.*

Mesne [fr. *medius*, Lat.], middle, intermediate.

Mesne Lord, a lord who holds of a superior lord.—*Cowel.*

Mesne process, all those writs which intervene in the progress of a suit or action between its beginning and end, as contradistinguished from primary and final process. Thus, the capias or mesne process was issued after a writ of summons, which was the primary process, and before a *capais ad satisfaciendum*, which was the final process, or process of execution. See IMPRISONMENT.

By the 1 & 2 Vict. c. 110, s. 1, the power of arrest upon mesne process was relaxed, and confined to the case of a debtor about to quit England, and where the amount of the debt was 20*l.* or upwards. But by the 32 & 33 Vict. c. 62, s. 6, it is enacted, that 'after the commencement of the Act a person shall not be arrested upon mesne process in any action.' Nevertheless, where a plaintiff has good cause of action against the defendant to the amount of 50*l.* or upwards, and the defendant is about to quit England, and the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, a judge may order the defendant to be arrested unless or until security be found.

Mesne profits, Action of, an action of trespass brought to recover profits derived from land, whilst the possession of it has been improperly withheld; that is, the yearly value of the premises.

The action should be brought in the name of the plaintiff, who has recovered judgment in the ejectment, and lies against any person found in possession of the premises after a recovery in ejectment. It cannot be maintained against executors or administrators for the profits accruing during the lifetime of the testator or intestate, and received by him, except, indeed, for those received within six calendar months before the death of the testator or intestate, and then only provided the action be brought against the executor or administrator within six months after entering upon the administration of the estate (3 & 4 Wm. IV. c. 42, s. 2). The defendant may pay money into court, as in other actions.

The jury are not bound by the amount of the rent, but may give extra damages. But ground-rent paid by the defendant should be deducted from the damages. A plaintiff may recover in this action the costs of the action of ejectment.

A claim for mesne profits in respect of the premises claimed may be joined with an action for the recovery of land (R. S. C. 1883, Ord. XVII., r. 2). See EJECTMENT.

Mesne, Writ of, an ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail; the latter had a writ of mesne against the mesne lord.

Messarius [fr. *messis*, Lat.], a chief servant in husbandry; a bailiff.—*Mon. Angl.*, tom. ii., p. 832.

Messenger, one who carries an errand; a forerunner.

Messengers are certain officers employed under the direction of the secretaries of state, and always ready to be sent with despatches, foreign and domestic. They were employed with the secretaries' warrants to arrest persons for treason, or other offences against the state, which did not so properly fall under the cognizance of the Common Law, and, perhaps, were not properly to be divulged in the ordinary course of justice.—2 *Hawk. P. C.* c. xvi., s. 9.

There are other officers distinguished by this appellation, as the messengers of the Lord Chancellor, Privy Council, and Ex-

chequer, etc. Also, in bankruptcy, persons officially appointed who seize a bankrupt's property. The office of messenger of the Great Seal has been abolished by 37 & 38 Vict. c. 81.

Messe thane, one who said mass; a priest. —*Cowel.*

Messina, harvest.—*Cowel.*

Messis sementem sequitur.—(Harvest follows the sower.) But see EMBLEMENTS.

Messuage [fr. *messuagium*, law Lat., formed perhaps fr. *mesnage*, by mistake of the *n*, in court hand, for *u*, they being written alike; or fr. *maison*, Fr.], a dwelling-house with its outbuildings and curtilage and some adjacent land assigned to the use thereof. As to the legal import of the word, see *Monks* v. *Dykes*, 4 *M. & W.* 567.

In Scotland the principal dwelling-house within a barony.—*Bell's Dict.*

Metachronism [fr. μετά, Gk.; and χρόνος, time] an error in computation of time.

Metal, Dealers in old. See 24 & 25 Vict. c. 110, relating to their trade, requiring registration, and giving powers of visitation and search to the police. See also 34 & 35 Vict. c. 112, s. 13.

Metalliferous Mines Regulation Act, 1872. See 35 & 36 Vict. c. 77, and 38 & 39 Vict. c. 39.

Metayer system. Under this, the land is divided in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving, in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually (as is implied in the words *métayer*, *mezzaiuolo*, and *medietarius*) one-half.—1 *Mill's Pol. Eco.* 296 & 363; and 2 *Smith's Wealth of Nat.* 3, c. ii.

Metecorn, a measure or portion of corn given by a lord to customary tenants as a reward and encouragement for labour.—*Cowel.*

Metegavel [*meat-tax*, Sax.], a tribute or rent paid in victuals.—*Cowel.*

Meter [fr. *mete*, Sax.], an instrument of measurement, as a coal-meter, a land-meter.

Metewand, or **Meteyard**, a staff of a certain length wherewith measures are taken.

Methel, speech, discourse; *mathlian*, to speak, to harangue.—*Anc. Inst. Eng.*

Metric system, a system in numbering of coinage, weights, measures, etc., wherein the *integer* is divided into fractions of a tenth, hundredth, etc., and no others. Contracts may now be made on this system. See 27 & 28 Vict. c. 117, which recites that 'for the promotion and extension of our internal as well as our foreign trade, it is expedient to legalise the use of the Metric system of weights and measures.'

Metropolis. The principal city, being the seat of government, in any kingdom; the cities of London and Westminster and the parishes adjacent thereto; the county of London. See LONDON.

Metropolis Gas Act, 1860, 23 & 24 Vict. c. 125, amended by 24 & 25 Vict. c. 79.

Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, amended by 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102; 29 & 30 Vict. c. 31; 37 & 38 Vict. c. 67; 38 & 39 Vict. c. 33; and 45 Vict. c. 14, to some extent repealed by the Public Health (London) Act, 1891. See *Chitty's Statutes*, vol. iv., tit. '*Metropolis.*'

Metropolitan Board of Works, a board constituted in 1855 by 18 & 19 Vict. c. 120, for the better sewering, draining, paving, cleansing, lighting, and improving the metropolis, and elected by vestries and district boards, in their turn elected by the ratepayers. The powers, duties, and liabilities of the Board are transferred to the London County Council by s. 40, subs. 8, of the Local Government Act, 1888.

Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122; amended by 23 & 24 Vict. c. 52; 24 & 25 Vict. c. 87; and 32 & 33 Vict. c. 82; 34 & 35 Vict. c. 39; 37 & 38 Vict. c. 67, s. 14; and 45 Vict. c. 14. See *Chitty's Statutes*, vol. iv., tit. '*Metropolis.*'

Metropolitan Burials. See 13 & 14 Vict. c. 52; 14 & 15 Vict. c. 89; 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; and 20 & 21 Vict. cc. 35, 81. See *Chitty's Statutes*, vol. i., tit. '*Burial.*'

Metropolitan District. Places subject to the jurisdiction of the Metropolitan Board of Works, enumerated in schedules A, B, C, to the Metropolis Management Act, 1855.

Metropolitan Police Acts, 10 Geo. IV. c. 44; 3 & 4 Wm. IV. c. 89; 2 & 3 Vict. c. 47; 2 & 3 Vict. c. 71; 2 & 3 Vict. c. 94, (City of London); and 3 & 4 Vict. cc. 84, 89; 17 & 18 Vict. c. 95; 18 & 19 Vict. c. 120; 19 & 20 Vict. c. 2; 20 & 21 Vict. c. 64; 23 & 24 Vict. c. 135; 24 & 25 Vict. cc. 51, 124; 31 & 32 Vict. c. 67; 34 Vict. c. 35; 37 & 38 Vict. c. 58; 38 & 39 Vict. cc. 28, 48; and (as to Salaries of Magistrates) 38 & 39 Vict. c. 3. See *Chitty's Statutes*, vol. iv., tit. '*Police (Metropolis)*'.

Metropolitan Police District. Places subject to the jurisdiction of the Metropolitan Police Magistrates, enumerated in the schedule to 10 Geo IV. c. 44.

Metropolitan Public Carriage Act, 1869, 32 & 33 Vict. c. 115.

Metropolitan Streets Act, 1867, 30 & 31

Vict. c. 134; amended by 31 & 32 Vict. c. 5.

Metropolitan Stage Carriage Acts, 6 & 7 Vict. c. 86; 13 & 14 Vict. c. 7; and 16 & 17 Vict. cc. 33, 127.

Metteshep, or **Mettenschep,** an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.—*Old Records.*

Meubles meublant [Fr.], household furniture.

Meya, a mow or heap of corn.—*Blount Ten.* 130.

Micel-gemote. See MICHEL-GEMOTE.

Michael Angelo Taylor's Act, 57 Geo. III. c. xxix., for better paving and regulating the streets of the Metropolis, partly superseded by the Metropolis Management Acts, and the Public Health (London) Act, 1891, which repeals 'as from the coming into operation of any bye-law made for the like object,' s. 73 and other sections of M. A. Taylor's Act, but leaves unrepealed s. 73 of the Metropolis Management Act, 1862, which incorporates M. A. Taylor's Act, so far as in force and not inconsistent with the Act of 1862 and the Acts recited therein.

Michaelmas, the feast of the Archangel Michael, celebrated on the 29th of September, and one of the usual quarter days.

Michaelmas Head Court, a meeting of the heritors of Scotland, at which the roll of freeholders used to be revised.—20 *Geo. II.* c. 50. See *Bell's Scotch Law Dict.*

Michaelmas Sittings of the Supreme Court commence on the 24th of October, and terminate on the 21st of December.

Michaelmas Term begins on the 2nd and ends on the 25th of November in every year. The division of the legal year into terms is abolished so far as relates to the administration of Justice (Jud. Act, 1873, s. 26).

Michel-gemote, the great meeting or ancient parliament of the kingdom.—1 *Bl. Com.* 147.

Michel-synoth, the great council of the Saxons.—1 *Bl. Com.* 147.

Michery, theft; cheating.

Middle-man, an agent between two parties, as where a person takes land in large tracts from the proprietors, and then leases it out in small portions at an enhanced rent.

Middlesex, Bill of, a writ anciently resorted to by the Court of Queen's Bench, in order to enlarge its jurisdiction in civil causes, which was formerly confined to actions of trespass, or other injury alleged to have been committed *vi et armis.* But it might always hold pleas of any civil action other than actions real, provided the defendant was an officer of the court, or in the custody of the marshal, or prison-keeper of the court. In proceedings against prisoners or officers of the court, the actions were said to be commenced by bill, in all other cases by original writ. Both are abolished by 2 Wm. IV. c. 39.

Middlesex Industrial Schools Act, 17 & 18 Vict. c. 169.

Middlesex Quarter Sessions. By 7 & 8 Vict. c. 71, there are held for the county of Middlesex two sessions, or adjourned sessions of the peace, in every calendar month, and the first sessions, in January, April, July, and October respectively, are the general quarter sessions of the county; and the second sessions in January, April, July, and October, are adjournments of the general quarter sessions. See also 14 & 15 Vict. c. 55, ss. 14—17; and 22 & 23 Vict. c. 4; and as to the payment of the Assistant Judge and his Deputy, see 37 Vict. c. 7.

Middlesex Registration of Deeds, 7 Anne c. 20; and 25 Geo. II. c. 4; and see the 'Vendor and Purchaser Act, 1874,' 37 & 38 Vict. c. 78, s. 8, as to non-registration of Wills affecting realty in Middlesex; also the Land Registry (Middlesex Deeds) Act, 1891, 54 & 55 Vict. c. 64, by which the Middlesex Registry is transferred to the Land Registry, and new regulations as to registration are made.

Midsummer-day, the summer solstice, which is on the 24th day of June, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A.D. 400. It is generally a quarter day for the payment of rents, etc.

Mile, a measure of length containing 8 furlongs, or 1760 yards, or 5280 feet.

Mileage, travelling expenses, which are allowed to witnesses, sheriffs, and bailiffs, according to certain scales of fees observed by the officers of the several courts.

Milestones. The trustees of turnpike roads were, very early in the history of such roads (see 3 Geo. IV. c. 26, s. 119), under an obligation to set up and maintain milestones, but there is no such legal obligation upon the managers of public highways, although the Highway Rate, etc., Act, 1882, 45 & 46 Vict. c. 27, by s. 6 constitutes 'the expenses incurred by a highway authority in maintaining, replacing, or setting up milestones on any highway' a 'lawful charge upon the highway rate.'

Miles [Lat.], generally, a soldier; particularly, a knight.

Militaire, to be knighted.

Military Asylum of Chelsea, for the reception of children of soldiers.—17 & 18 *Vict.* c. 61.

Military courts, the court of chivalry and

courts martial. See CHIVALRY, COURTS OF, and COURTS MARTIAL.

Military feuds, the genuine or original feuds which were in the hands of military men, who performed military duty for their tenures. See TENURE.

Military forces. See ARMY, and also titles MILITIA and RESERVE FORCES.

Military Forces Localization Act, 1872, 35 & 36 Vict. c. 68; amended by 36 & 37 Vict. c. 68, s. 8; and 36 & 37 Vict. c. 84, s. 2.

Military Laws. See MARTIAL LAW.

Military Manœuvres (Autumn). See 34 & 35 Vict. c. 97; 35 & 36 Vict. c. 64; and 36 & 37 Vict. c. 58.

Military offences, those offences which are cognisable by the courts military, as insubordination, sleeping on guard, desertion, etc.

Military Savings Banks. By 22 & 23 Vict. c. 20 (which repealed former Acts), the Queen may establish or continue military or regimental savings banks, for the receiving sums of money from such of the non-commissioned officers and soldiers employed in her service, either in the United Kingdom or upon foreign stations (India alone excepted), as may be desirous of depositing the same, and for receiving deposits of any money or funds whatsoever raised or paid for objects or purposes connected with non-commissioned officers and soldiers, which Her Majesty may from time to time think fit to authorise to be deposited in such savings banks. The regulation and the management of such institutions are entrusted to the Secretary at War for the time being, in concurrence with the Commander-in-Chief, and the Commissioner of the Treasury. See also 26 & 27 Vict. c. 12.

Military tenure, tenure in chivalry or knight service.

Military testament, a nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases.—1 *Vict.* c. 26, s. 11.

Militia, the national soldiery, as distinguished from the regular forces or standing army, being the inhabitants, or as they have been sometimes called, the *trained bands* of a town or county, who are armed on a short notice for their own defence. As to its origin, see 3 *Hall. Cons. Hist.* 262. The statutes on this subject make service compulsory upon all men between 18 and 30 who shall be selected by ballot (23 & 24 Vict. c. 120, s. 7), with exceptions for peers, clergymen, etc. (42 Geo. III. c. 90, s. 43), but by Acts dating from 10 Geo, IV. c. 10, and finally in 1865 by 28 & 29 Vict. c. 46,—a temporary Act, which has been continued from time to time by successive Expiring Laws Continuance Acts,—these statutes were suspended, subject to a power in the Crown to revive them by Order in Council.

Voluntary enlistment in the militia, which was the practice long before the Suspension Act was passed, is regulated by the Militia Act, 1882, 45 & 46 Vict. c. 49, replacing the Militia (Voluntary Enlistment) Act, 1875, 38 & 39 Vict. c. 69, the schedule of which contains a long list of repealed militia Acts.

Milk. As to the sale of unwholesome milk, see Public Health Act, 1875, ss. 116—119, and Sale of Food and Drugs Acts, 1875 and 1879, by s. 3 of which latter Act inspectors of nuisances and other officers may obtain, for analysis, a sample of milk at the place of delivery. See also ADULTERATION.

Milleate, or **Mill-leat**, a trench to convey water to or from a mill.—7 *Jac. I.* c. 19.

Milled money, coined money.

Mill-holms, low meadows and other fields in the vicinity of mills, or watery places about mill dams.—*Encyc. Lond.*

Minage, a toll or duty paid for selling corn by the mina.—*Cowel.*

Minare, to dig mines.—*Cowel.*

Minator, a miner.—*Old Records.*

Minator carucæ, a ploughman.—*Cowel.*

Minatur innocentibus, qui parcit nocentibus. 4 Co. 45.—(He threatens the innocent who spares the guilty.)

Mine [fr. *mwyn* or *mwy*, Wel., fr. *maen*, a stone], an excavation or cavern in the earth, which yields metal or minerals. Where stones only are produced, the places from which they are dug out are called quarries. As to what are minerals, see 2 *Mod.* 193; *Plowd.* 337; 14 *M. & W.* 859—872; and *L. R.* 1 *Ch.* 303.

The Crown has a right of pre-emption of any gold or silver which may be found in mines of copper, tin, iron, or lead, by 1 & 2 W. & M. sess. 1, c. 30, s. 4; 5 & 6 W. & M. c. 6; and 55 Geo. III. c. 134.

A man may dig mines in his own lands, but he cannot go under the land of his neighbour, for that would be trespass.—6 *Ves.* 147. The lord of the manor, as such, has no right, without a custom, to enter upon copyhold lands in his manor, under which there are mines or veins of coal, to bore for or work the same, for the copyholder may maintain trespass for his so doing, and also obtain an injunction against the lord to restrain him.—17 *Ves.* 281. But a copyholder of inheritance may dig mines in his own land by special custom.

As to the mining leases of a tenant for life, see SETTLED LAND.

The inspection of coal mines is regulated

by the Coal Mines Regulation Act, 1887, 50 & 51 Vict. c. 58, and of iron and other mines not being coal mines by the Metalliferous Mines Regulation Act, 1872, 35 & 36 Vict. c. 77.

Coal mines only were ratable under 43 Eliz. c. 2, but the Rating Act, 1874, 37 & 38 Vict. c. 54, has made all mines ratable.

As to the sale or reservation of minerals by trustees, see 25 & 26 Vict. c. 108.

See as to mines under or near railways, 8 Vict. c. 20, ss. 77—85, and under or near waterworks, 10 Vict. c. 17, ss. 18—27.

Minerator, a miner.—*Old Records.*

Minima pœna corporalis est major qualibet pecuniariâ. 2 Inst. 220.—(The smallest bodily punishment is greater than any pecuniary one.)

Minimè mutanda sunt quæ certam habent interpretationem. Co. Litt. 365.—(Things which have a certain interpretation are to be altered as little as possible.)

Miniment, or **Muniment**, the evidences or writings whereby a man is enabled to defend the title of his estate. It includes all manner of evidences.—*Covel.*

Minimum est nihilo proximum.—(The smallest is next to nothing.)

Minister, an agent; one who acts not by an inherent authority, but under another.

In politics, one to whom a sovereign entrusts the administration of government. In Great Britain, the word *ministry* is used as a collective noun for the heads of departments in the state.

In religion, a pastor of a church, chapel, or meeting-house, etc.

Ministerial, attendant; acting under superior authority; the word is used in opposition to judicial.

Ministrant, the party cross-examining a witness under the old system of the ecclesiastical courts.

Ministri regis (*ministers of the king*), applied to the judges of the realm, and to all those who hold ministerial offices in the government.—2 *Inst.* 208.

Ministry [contracted fr. *ministery*], office; service. Those members of the government who are in the cabinet.

Minor, a person under age, who is not yet arrived at the power of managing his own affairs. See INFANT.

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve. 2 Inst. 291.—(A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but the writ does not fail.)

Minor 17 *annis, non admittitur for executorem.* 6 Co. 68.—(A minor under seventeen years of age is not admitted to be an executor.)

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit. Co. Litt. 88.—(A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.)

Minor non tenetur respondere durante minori ætate; nisi in causâ dotis, propter favorem. 3 Bulst. 143.—(A minor is not bound to reply during his minority, except as a matter of favour in a cause of dower).

Minor, qui infra ætatem 12 *annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliquâ, nec in decennâ.* Co. Litt. 128.—(A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law, nor in a decennary.)

Minora regalia, the lesser prerogatives of the Crown, relating to the revenue.

Minority [fr. *minor*, Lat.], the state of being under age, i.e., twenty-one years. Also, the smaller number.

Mint [fr. *moneta*, Lat.; *mynet*, Sax., money, from *mynetian*, to coin], the place where money is coined. The mint of Great Britain is situated near the Tower of London. By 33 & 34 Vict. c. 10 (repealing various Acts), the laws relating to the coinage and Her Majesty's mint are consolidated and amended. See COIN. As to colonial coinage, see 29 & 30 Vict. c. 65. See MASTER OF THE MINT.

Also, a place of privilege in Southwark, near the Queen's prison, where persons formerly sheltered themselves from justice under the pretext that it was an ancient palace of the Crown. The privilege has long been abolished.

Mint-mark. The masters and workers of the mint, in the indentures made with them, agree 'to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making'; after every trial of the pix, having proved their moneys to be lawful they are entitled to their *quietus* under the Great Seal, and to be thereanent discharged from all suits or actions; they then change the privy mark, that so the moneys from which they are not yet discharged may be distinguished from those for which they are; they use the new mark until another trial of the pix. See PYX, and 33 Vict. c. 10, s. 12.

Mint-master, one who manages the coinage. See MASTER OF THE MINT.

Mintage, that which is coined or stamped.

Minute, 60 seconds, or the 60th part of a degree or hour; also a memorandum.

Mirror des Justices. This singular work has raised much doubt and difference of opinion concerning its antiquity. Some have pronounced it older than the Conquest, others have ascribed it to the time of Edward II.

This book, which bears the name of Andrew Horne, and is written with very little precision, treats of all branches of the law, whether civil or criminal. Besides this, it gives a cursory retrospect of some changes ordained by former kings; enumerates a list of abuses, as the author terms them, of the Common Law, proposing, at the same time, what he considers to be desirable corrections. He does the same with Magna Charta, the statutes of Merton and Marlbridge, and some principal Acts in the reign of Edward I.—2 *Reeves*, c. xii. 358.

Misa, a compact, a firm peace.—*Old Records.*

Misadventure, Excusable homicide by, also termed homicide *per infortunium*; it arises where a man, doing a lawful act, without any intention of hurt, unfortunately kills another, as where a person is at work with a hatchet, and the head of it flies off and kills a bystander, or is shooting at a mark and undesignedly kills a man, for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure, for the act of correction was lawful; but if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at least, and in some cases, according to the circumstances, murder, for the act of immoderate correction is unlawful.—*Fost.* 275.

Misallege, to cite falsely as a proof or argument.

Misappropriation by Servants Act, 26 & 27 Vict. c. 103, provides that servants taking their master's corn, etc., without authority, for the purpose of giving the same to their masters' horses, etc., shall not be guilty of felony, but shall be liable to imprisonment.

Miscarriage, a failure of justice. See 29 Car. II. c. 3, s. 4.

Miscarriage, Producing. See ABORTION.

Mischief. This word is often used as signifying the evil or danger which a statute is meant to cure or avoid.

Mischievous animals. As to the liability of the owners for damage done by such animals, see ANIMALS.

Miscognizant, ignorant of, unacquainted with.

Miscontinuance, cessation, intermission.

Misdemeanour, a species of crime or offence comprehending all breaches of public law less than felony, as libels, conspiracies, assaults, etc., which are not so atrocious as murder, burglary, arson, etc., which are felonies. As to bail in misdemeanours, see 16 & 17 Vict. c. 32. Consult *Archbold's Crim. Plead., and Russell on Crimes.*

Misdirection, an error in law made by a judge in charging a jury. See Jud. Act, 1875, s. 22, and NEW TRIAL.

Mise, disbursement, costs; also a tax or tallage, etc.; also, the issue in a writ of right. It is sometimes corruptly used for *mease* or *mees*, i.e., a messuage.

Miselli, leprous persons.—*Cowel.*

Mise-money, money paid by way of contract or composition to purchase any liberty, etc.—*Blount.*

Misera est servitus ubi jus est vagum aut incertum. 4 Inst. 245.—(It is a wretched state of slavery which subsists where the law is vague or uncertain.)

Miserabile depositum, an involuntary deposit under pressing necessity.—*Civ. Law.*

Miserere (*have mercy*). The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy: whence it is also called the psalm of mercy.

Misericordia, an arbitrary amerciament or punishment imposed on any person for an offence. It is thus called, according to Fitzherbert, because it ought to be but small and less than that required by Magna Charta.—*Anc. Inst. Eng.*

Also, a discharge of all manner of amerciaments, which a person might incur in the forest. See CAPIAS PRO FINE. See 1 *Chit. Arch. Prac.*, 12th ed., 527.

Misericordia communis, a fine set on a whole county or hundred.

Misericordia domini regis est, quâ quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat. Co. Litt.—(The mercy of our lord the king is that by which every one is to be amerced by a jury of good men from his immediate neighbourhood, lest he should lose any part of his own honourable tenement.)

Misevenire, to fail or succeed ill.

Misfeazance, a misdeed or trepass; also, the improper performance of some lawful act.

Misfeazor, a trespasser.

Misfortune. See CHANGE.

Misjoinder of Parties. See PARTIES.

Miskenning, a wrongful citation.—*Du Cange; Anc. Inst. Eng.*

Misnomer, a wrong name. In real and mixed actions at Common Law a misnomer was a ground of abatement, but not in any personal action; but in all cases in which a misnomer would, but for the following act, have been pleadable in abatement, the defendant was at liberty to cause the declaration to be amended at the plaintiff's cost by inserting the right name. And this was done by taking out a summons before a judge at chambers, founded on an affidavit of the right name, and in case the summons was discharged, the costs of such application were paid by the party applying, if the judge thought fit.—3 & 4 *Wm. IV.* c. 42, s. 11. Where a plaintiff sued a defendant by his wrong Christian name, but declared against him by his right Christian name, the proceeding was regular under the foregoing Act of Parliament.

Misnomers in civil proceedings are curable under R. S. C. 1883, Ord. XXVIII., and misnomers in criminal pleading by 7 Geo. IV. c. 64, s. 19.

Misnomers in lists, notices, or voting papers, etc., required by the Municipal Corporations Act, 1882, do not, by s. 241 of that Act, hinder the full operation of it, 'provided the description be such as to be commonly understood,' and there is a similar provision as to lists of parliamentary voters, etc., at the end of s. 10 of the Parliamentary Registration Act, 1843, 6 Vict. c. 18.

As to misnomer of a juror, see *Reg.* v. *Mellor*, *D. & B.*, *C. C. R.* 468; 4 *Jur. N. S.* 214.

Mispleading. See JEOFAILS.

Misprision [fr. *mépris*, Fr.], neglect, negligence, or oversight.

All such high offences as are under the degree of capital, but nearly bordering thereon, are misprisions; and it is said that a misprision is contained in every treason and felony whatsoever, and that, if the Crown so please, the offender may be proceeded against for the misprision only. And upon the same principle, while the court of Star Chamber existed, it was held that the sovereign might remit a prosecution for treason, and cause the delinquent to be censured in that court, merely for a high misdemeanour; as in the case of Roger, Earl of Rutland, in 43 Eliz., concerned in Essex's rebellion. Every great misdemeanour, according to Coke, which has no certain term appointed by the law, is sometimes called a misprision.

Misprisions are divided in the text-books into two kinds:—

(1) *Negative*, the concealment of what ought to be revealed; such is *misprision of treason*, the bare knowledge and concealment of treason without any degree of assent, for any assent makes the party a principal; as the concealment, construed to be aiding and abetting, did at the Common Law; but it was enacted by st. 1 & 2 Ph. & M. c. 10, that a bare concealment of treason shall be only held a misprision. Information will not lie for this offence, but indictment, as for capital crimes. There must be two witnesses to support the case.—7 & 8 *Wm. III.* c. 3; 1 *Hale P. C.* 374; 4 *Steph. Com.*, 426; 4 *Br. & Had.* 97 *et seq.*

Besides the last described offence, the mere concealment of a felony is criminal, and is called *misprision of felony*: but if there be an assent, this makes the person assenting either a principal or accessory. *Theftbote*, and *concealing treasure-trove*, are each of them species of negative misprision.—4 *Steph. Com.*

(2) *Positive*, otherwise denominated contempt or high misdemeanours, such as the mal-administration of such high officers as are in public trust and employment, usually punishable by parliamentary impeachment; also, embezzlement of the public money, punishable by fine and imprisonment; also, such contempts of the executive magistrate as demonstrate themselves by some arrogant and undutiful behaviour towards the sovereign and government. And to endeavour to dissuade a witness from giving evidence, to disclose an examination before the Privy Council, or to advise a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts, punishable by fine and imprisonment.

Misprisions of clerks are mistakes made by clerks, etc., in writing or keeping records.

Misrecital, a wrong recital. If it be in the beginning of a deed, which goes not to the end of a deed, it shall not hurt, but if it go to the end of a sentence, so that the deed is limited by it, it is vicious.—*Cart.* 149.

Misrepresentation, i.e., *suggestio falsi*, in a matter of substance essentially material to the subject, whether by acts or by words, by manœuvres or by positive assertions whereby a person is misled and injured, and a fraud perpetrated. It is immaterial whether the misrepresentor knew the matter to be false, or asserted it, without knowing if it were true or false; for the affirmance of that which is not known to be true is as unjustifiable as the assertion of that which is known to be false, since it is equally a means of deception. But equity would not relieve, if the misrepresentation were of a trifling or immaterial thing, or if the other party did not trust to it, or was not misled by it, or if it were vague and inconclusive in its own nature, or if it were upon a matter of opinion

or fact equally open to the inquiries of both parties, and in regard to which neither could be presumed to have confided in the other, for *vigilantibus, non dormientibus, æquitas subvenit.* Equity cannot indemnify a person from the consequences of indolence and folly, or of careless indifference and neglect of easily accessible means of information. See more fully under the title DECEIT.

Misrepresentation of solvency, etc. By 9 Geo. IV. c. 14, s. 6, no action lies in respect of any representation of the credit, trade, dealings, etc., of another, to obtain credit for that other, unless it be in writing, signed by the party to be charged therewith. See DECEIT.

Missa, the mass.

Missæ presbyter, a priest in orders.—*Blount.*

Missal, the mass-book.

Misstaicus, a messenger.—*Old Records.*

Missura, the ceremonies used in the Romish Church to recommend and dismiss a dying person.

Mistake, misconception, error.

The word 'mistake,' as it has been employed in Chancery, is to be understood as an unintentional act or omission, arising from ignorance or imposture. Mistakes are either (1), of law; or (2), of fact.

As to the former, equity regards the well-known and ancient maxim, *Ignorantia legis neminem excusat;* for 'otherwise,' observed Lord Ellenborough, *Bilbie* v. *Lumley*, 2 *East*, 469 (1802), 'there is no saying to what extent the excuse of ignorance might be carried.'

The following propositions illustrate this maxim: Where an obligee releases one of two joint-obligors, supposing that, in point of law, the other will still be bound, he nevertheless releases both, and equity will not relieve him, provided his release have not been procured by fraud. So, where a person, having a power of appointment, executes it absolutely without a power of revocation, upon a notion that in law a voluntary deed is always revocable, he is not entitled to relief unless indeed there had been an intention of inserting such a power, and it has been omitted by mistake in the draft. And all agreements entered into with good faith, but under a mistake of law, will be binding on all the parties, especially those agreements which seek to preserve the honour and peace of families, whose establishment is part of the final cause of government.

It is, however, to be remarked that if a person acting in plain ignorance of a settled principle of law is induced to give up, by way of compromise, a right or a portion of his indisputable property, of which he has no knowledge, equity will relieve him from the effect of his error, the misapprehension that he possesses no title at all to property being held to constitute a mistake of fact, i.e., the fact of ownership, arising from a mistake of law. And where a man having a right to an estate, purchased it of another person, being ignorant of his own title, the vendor was compelled to repay the purchase-money, with interest from the time of filing the bill, and costs.—*Bingham* v. *Bingham*, 1 *Ves.* 126 (1748).

As to the other kind of mistakes, the fundamental rule is that an act done under a mistake or ignorance of a material fact, i.e., a fact essential to the character of the act, and an efficient cause of its being done, is relieved against in equity, provided compensation can be made for the injury occasioned by it; and this although there be no fraud and the parties are entirely innocent. But besides the materiality of the fact, it must also be a fact which the exercise of reasonable diligence could not have ascertained; for if so, equity will not relieve, as that would be to encourage culpable neglect. Where, however, each party is equally innocent, and there is not any concealment by one of facts which the other has a right to know, and there is no surprise or imposition, the mistake or ignorance, whether mutual or on one side only (or *unilateral*, as the Scotch law expresses it), is treated as laying no foundation for equitable interference. It is strictly *damnum absque injuriâ.*—1 *Sto. Eq. Jur.*, chap. v., and see *Lord St. Leonards V. and P.* 179. A mistake of a fact and an ignorance of a fact differ in meaning; the former supposes some error of opinion as to the real facts; but the latter may be mere want of knowledge without any error of opinion. The two phrases are, however, convertible, and are commonly used synonymously.

Equity has been frequently resorted to, in order to amend written agreements, which, on account of a plain mistake (clearly and satisfactorily proved), do not set forth the precise intent of the parties. 'No doubt,' said Lord Hardwicke, *Henkle* v. *R. E. Assur. Co.* (1 *Ves.* 317 (1749), 'but this court has jurisdiction to relieve in respect of a plain mistake in contracts in writing, as well as against frauds in contracts in writing, so that, if reduced into writing contrary to the intent of the parties, that, on proper proof, would be rectified.' Marriage settlements and conveyances are on the same grounds rectified and made consistent with the purpose intended.

But besides the relief granted, where the fact of the mistake is clearly established,

assistance will be extended to those cases in which the mistake is fairly implied from the nature of the transactions; thus, in the instance of a joint loan to two or more obligors, who give a joint bond for its repayment, equity will make it joint and several, since the debt being joint, the plain inference is that it was the intent of the parties to attach the responsibility to each obligor and to all equally, which is not effected by a joint bond, for in that case on the death of one obligor the survivor only is liable at law to be sued for the debt; equity therefore acts upon the presumption that the omission arose from a blunder or mistake.

Equity will also supply defects in conveyances occasioned by mistake, as a surrender in copyhold transfers for valuable, but not for merely meritorious, consideration; livery of seisin in feoffments, and instruments given up or cancelled by mistake, and in ignorance of the facts, upon the ground that the party in whose favour they were made is conscientiously entitled to the benefit of such instruments. Besides, equity regards not the outward form but rather the inward substance and essence of the matter.

Defective executions of all kinds of powers arising from accident or mistake, are relieved against, and the defect supplied by compelling the person seised of the legal estate to convey in the manner pointed out by the defective appointment in favour of the donee's creditors, *bonâ fide* purchasers for value, mortgagees, lessees, wives, or children, and also in favour of charities, against remainder-men and heirs-at-law duly provided for, but such relief must not operate any injustice to others or involve a breach of trust, and there must be an absence of all counter equity; neither must the intention of the author of the power be thereby defeated, nor the enactments of an Act of Parliament contravened. See *West* v. *Ray*, 2 *Eq. Rep.* 431 (1854).

Obvious mistakes or omissions in a will can be rectified or supplied in equity, when they are apparent upon its face or may be made out on a due construction of its terms, for in such cases intention prevails over language. Parol evidence or evidence out of (*dehors*) the will is not admissible to vary or control its terms, although it is so to remove a latent ambiguity. Equity will correct mistakes in the computation of legacies, in the property intended to be given, or in the names, descriptions, or number of the legatees.

If a testator's intention be not consistent with the policy of the law so that it cannot be specifically acted upon, yet equity will give effect to such intention, as nearly as the rules of law will allow, by applying what is technically called the doctrine of *cy-près* (i.e., as near to), which is simply a practical and legal scheme to carry out an intent, which is strictly impracticable and not perfectly consistent with legal principles, as where lands are limited to an unborn person for life, with remainder to his first and other sons successively in tail. As such limitations are clearly incapable of taking effect, since the Common Law rule prohibited the limitation of a possibility upon a possibility, and made the remainder of the issue absolutely void, this doctrine, in order to prevent the total frustation of the intention in favour of the issue, gives to the parent the estate-tail which was designed for the issue; under which estate-tail, unless barred by some act on the part of the parent, the lands will descend to the persons intended to have been made tenants-in-tail by purchase. The intention that the testator's bounty shall flow to the issue is considered as paramount to that which regulates the manner of their taking, and the latter is therefore sacrificed.

This doctrine does not apply to limitations of personalty, except in the case of charities (see CY-PRÈS), or to deeds, or to any attempt made to limit a succession of life estates to the issue of an unborn person, either for a definite or indefinite series of generations; or to a limitation in fee simple for the children of unborn persons. See further as to this doctrine, *Fearne's Cont. Rem.*, and 2 *Lord St. Leonards on Powers.*

While equity will redress a mistake as between the original parties and their privies, it will neither relieve against mere accidents, nor rectify mistakes so as to affect *bonâ fide* purchasers for value without notice, for the mistakes or ignorances of parties to conveyances as to their claims cannot be allowed to be turned to the prejudice of such.

The rectification, or setting aside, or cancellation of written instruments is part of the business assigned to the Chancery Division of the High Court (Jud. Act, 1873, s. 34).

In criminal cases a mistake of *fact* is an excuse, as when a man, intending to do a lawful act, does that which is unlawful.

Mistery [fr. *métier*, Fr.], a trade or calling. —*Cowel.*

Mistress, the proper style of the wife of an esquire or a gentleman.

Mistrial, an erroneous trial.

Misuser, abuse of any liberty or benefit which works a forfeiture of it.

Mitigation, abatement of anything penal, harsh, or painful; an address in mitigation is a speech made by the defendant or his council to the judge, after verdict or plea

of guilty, and which may be followed by a speech in aggravation from the prosecuting counsel.

By the 27 & 28 Vict. c. 110, justices were prohibited from mitigating minimum penalties in pursuance of any power of mitigating penalties conferred on such justices by any local or private Act of Parliament; but this Act is repealed, as to England, by the Summary Jurisdiction Act, 1879, which gives an almost unlimited power of mitigating such penalties as may be imposed by justices.

Mitior sensus (*the more favourable acceptation*).

Mitius imperanti melius paretur. 3 Inst. 24.—(He is better obeyed who commands leniently.)

Mittendo manuscriptum pedis finis, an abolished judicial writ addressed to the treasurer and chamberlain of the Exchequer to search for and transmit the foot of a fine acknowledged before justices in eyre, into the Common Pleas.—*Reg. Orig.* 14.

Mitter le droit (*to pass a right*).—*Co. Litt.* 273 *a.* See RELEASE.

Mitter l'estate (*to pass an estate*). See RELEASE.

Mittimus (*we send*), a writ for removing and transferring records from one court to another. Also a precept or command in writing, directed to the gaoler or keeper of some prison for the receiving and safe keeping of an offender charged with any crime, until he be delivered by due course of law.

Mittre á large (*to set or put at liberty*).

Mixed actions. Suits at Common Law partaking of the nature of real and personal actions, by which some real property was demanded, and also personal damages for a wrong sustained, were so called. They substantially partook, however, of the character of real actions, and were often so called, but they are now abolished, except the action of ejectment.—3 & 4 *Wm. IV.* c. 27. Correctly speaking, however, ejectment is in its form a species of the personal action of trespass.—*Steph. Plead. app.* vii. See now ACTION.

Those in Roman law, in which some specific thing was demanded, and where also some personal obligations were claimed to be performed.—*Hallifax on Roman Law,* 85.

Mixed contract, one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself.—*Civ. Law.*

Mixed Government, a form of government, combining monarchy, aristocracy, and democracy, like that of the British Empire.

Mixed Larceny, otherwise called compound or complicated larceny, that which is combined with circumstances of aggravation or violence to the person, or taking from a house. See LARCENY.

Mixed Laws, those which concern both persons and property.

Mixed property, a compound of realty and personalty.

Mixed questions [*questions mixtes,* Fr.], those which arise from the conflict of foreign and domestic laws.

Mixed questions of law and fact, cases in which a jury are to find the particular facts, and the Court is to decide upon the legal quality of those facts by the aid of established rules of law, independently of any general inference or conclusion to be drawn by a jury. All technical expressions, such as asportation, conversion, acceptance, etc., are, in their application, partly matters of law, partly matters of fact. See 6 *East,* 3; 1 *T. R.* 167; and *Taylor's Evid.,* s. 24 *et seq.*

Mixed subjects of property, such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals, *feræ naturæ,* charters and deeds, court rolls and others evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armour, with pennons and other ensigns, and especially heirlooms.

Mixed tithes, tithes of wool, milk, pigs, etc., consisting of natural products, but nurtured and preserved in part by the care of man. See *Com. Dig.* 'Dismes,' and TITHES.

Mobilia sequuntur personam. Story's Confl. of Laws, s. 378.—(Movables follow the person.)

Mobles [fr. *mobilia,* Lat.], movable goods; furniture. Obsolete word.

Mockadoes, a kind of cloth made in England, mentioned in 23 Eliz. c. 9.

Mocurrery, lands to let on a lease.—*Indian.*

Model, a representation or copy of a thing. The 54 Geo. III. c. 56, gives a copyright in models.

Moderata misericordia, a writ founded on Magna Charta, which lies for him who is amerced in a court, not of record, for any transgression beyond the quality or quantity of the offence; it is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amerciament of the parties. —*N. N. B.* 167; *F. N. B.* 76.

Moderate castigavit (*he moderately corrected*).

Moderator, a president or chairman.

Modiatio, a certain duty paid for every tierce of wine.—*Mon. Angl.* t. ii., p. 194.

Modification, the term usually applied to the decree of the Teind Court, awarding a suitable stipend to the minister of a parish. —*Bell's Scotch Law Dict.*

Modius, a measure, usually a bushel.

Modius terræ vel agri, a quantity of ground containing in length and breadth 100 feet.—*Mon. Angl.* iii. 200.

Modo et formâ (*in manner and form*), a phrase formerly used in pleading. It was the nature of a traverse to deny the matter of fact in the adverse pleading in the *manner and form* in which it was alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. The plea of *non est factum*, and the replication *de injuriâ* (now abolished), were the only negative traverses not pleaded *modo et formâ*. These words were in no case strictly essential, so as to render their omission a cause of demurrer. See now PLEADING.

Modus decimandi, a particular manner of tithing arising from immemorial usage, differing from the payment of one-tenth of the annual increase.

It is sometimes a pecuniary compensation, as twopence per acre for the tithe of land; sometimes a compensation in work and labour, as that the parson shall only have the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him; sometimes in lieu of a large quantity of crude or imperfect tithe the parson shall have a less quantity when arrived to greater maturity, as a couple of fowls in lieu of tithe eggs and the like. Any means, in short, whereby the general law of tithing is altered and a new method of taking tithes is introduced, is called a *modus decimandi*, or special manner of tithing.

To make a good and sufficient *modus*, the following rules must be observed :—

(1) It must be certain and invariable. (2) The substitution must be beneficial to the parson, and not for the emolument of third persons only. (3) It must be something different from the thing compounded for. (4) The payment of one species of tithe will not discharge a *modus* for another. (5) The substitution must be in its nature as durable as the tithes discharged by it. (6) The *modus* must not be too large; for that is a *rank modus*. (7) There must be evidence of usage for thirty years, etc., in accordance with 2 & 3 Wm. IV. c. 100.—2 *Steph. Com.*, bk. iv., pt. ii., ch. 3.

Modus de non decimando non valet.—(An agreement not to take tithes avails not.)

Modus et conventio vincunt legem. 2 Co. 73.—(Custom and agreement overrule law.)

Modus legem dat donationi. Co. Litt. 19. —(Custom gives law to the gift.)

Modus levandi fines. The statute 18 Edw. I. See FINES.

Moerda, the secret killing of another; murder.—*Teutonic word.* 4 *Bl. Com.* 194.

Mofussil, separated, particularised; the subordinate divisions of a district, in contradistinction to *Sadder* or *Sudder*, which implies the chief seat of government.—*Indian.*

Mofussil-Dewanny adawlut, provincial court of justice.—*Ibid.*

Mohatra [Fr.], a fraudulent contract to screen usury.

Moidore, a gold coin of Portugal, value 27*s*.

Moiety [fr. *moitié*, Fr.], one of two equa parts; an undivided half.

Molendinum, a mill.—*Old Records.*

Molendum, a grist; a certain quantity of corn sent to a mill to be ground.

Molestation, the name of an action (now in disuse, being superseded by declarator and interdict) competent to the proprietor of a landed estate against those who disturb his possession.—*Bell's Scotch Law Dict.*

Molitura, or **Molta**, the toll or multure paid for grinding corn at a mill.

Molitura libera, a free grinding or liberty of a mill without paying toll.—*Paroch. Antiq.* 236.

Mollah, a doctor of laws.—*Arabic.*

Mollis-bœdling. See BŒDLING.

Molliter manus imposuit. An officer may lay hands upon another to turn him out of church (for instance), and prevent his disturbing the congregation; and if sued for this and the like battery, he may set forth the whole case and state that he laid hands upon him gently (*mollitur manus imposuit*) for this purpose.—3 *Steph. Com.*

Molman, a man subject to do service.—*Old Records.*

Molmutian, or **Molmutin laws**, the laws of Dunvallo Molmutius, sixteenth king of the Britons, who reigned above four hundred years before the birth of Christ. These were the first published laws in Britain, and, together with those of Queen Mercia, were translated by Gildas into Latin.—*Usher's Primord.* 126.

Molneda, Mulneda, a mill-pond or pond.—*Paroch. Antiq.* 135.

Molta. See MOLITURA.

Moltura. See *Ibid.*

Mona, a name for the Isle of Anglesea or the Isle of Man—perhaps for both.

Monachus, a monk.

Monarchy [fr. μόναρχος, Gk.], a government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed despotic; where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a limited monarchy. It is hereditary, where the regal power descends immediately from the possessor to the next heir by blood, as in our country; or elective, as was formerly the case in Poland.

Monasteries Dissolution Acts, 27 Hen. VIII. c. 28; 31 Hen. VIII. c. 13; 32 Hen. VIII. cc. 7, 24; and consult *Br. & Had. Com.* i. 466, and ii. 68.

Monasticon, a book giving an account of monasteries, convents, and religious houses.

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conveniens et justa æstimatio. Dav. 18.—(Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.)

Monetagium, Monya, or **Moneyage**, called also *focagium*, a certain tribute formerly paid by tenants to their lord every third year, that he should not change the money which he had coined, when it was lawful for certain great men to coin money, but not of silver and gold, in their territories. Abrogated by 1 Hen. I. c. 2.—*Hale's Hist.* 217.

Also a mintage, and the right of coining or minting money.

Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur. Dav. 18.—(The right of coining money is included in those rights of royalty which are never separated from the kingly sceptre.)

Money-bill, in parliamentary language an Act by which money is directed to be raised from the subject, for any purpose or in any shape whatsoever, either for governmental purposes, and collected from the whole kingdom generally, or for the benefit of a particular district, and collected in that district, as parish rates.

With respect to these bills the House of Commons are so reasonably jealous of their privilege of imposing new taxes upon the subject, that they will not suffer the House of Lords to exert any other power but that of rejection: they will not pass a money-bill introduced in the House of Lords, nor permit the least alteration or amendment to be made by the House of Lords in the mode of taxing the people by bills of this nature. See 1 *Bl. Com.* 170, 184.

Money-broker, a money changer; a scrivener or jobber; one who lends or raises money to or for others.

Money counts. Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These were called the *indebitatus*, or common money counts, or money counts. See PLEADING.

Money land. In equity, land articled or devised to be sold, and turned into money, is considered as money; and money articled or bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this upon the ground that equity regards substance and not form, and will further the intention of parties. See LAND.

Money agreed or directed to be laid out, so fully becomes land as, 1st, not to be personal assets; 2ndly, to be subject to the courtesy of the husband, and it should now seem to the dower of the wife (3 & 4 Wm. IV. c. 105); 3rdly, to pass as land by will, if subject to the real use at the time the will was made; 4thly, not to pass as money by a general bequest to a legatee, but it will by a particular description, as so much money to be laid out in land, or by a bequest of all the testator's estate in law and equity. But equity will not consider money as land, unless the covenant or direction to lay it out in land be express. See 1 *Wh. & Tud. L. C.*, 6th ed., 976.

The 7 Geo. IV. c. 45, which repealed the 39 & 40 Geo. III. c. 56 (commonly called Lord Eldon's Act), for barring *quasi* entails of money directed to be laid out in lands to be settled, was repealed by 3 & 4 Wm. IV. c. 74, except so far as related to proceedings commenced under it before the 1st of January, 1834. The 3 & 4 Wm. IV. c. 74, enacts (s. 71), that lands to be sold of any tenure where the money arising from the sale is subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate-tail therein, shall, for the purposes of the Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would have been actually subject to.

Monger [fr. *Mangian*, Sax., to trade], a dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such

commodity. Also, a little fishing vessel.—13 *Eliz.* c. 11.

Moniers, or **Moneyeers**, ministers of the Mint; also bankers.—*Cowel.*

Moniment, a memorial, superscription, or record.

Monition, a summons or citation; a direction by an ecclesiastical judge to a clergyman to abstain from practices contrary to ecclesiastical law. See *Dale's case*, 6 *Q. B. D.* 376.

Monitory Letters, communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognisance of his court.

Monmouth, county of, made one of the counties of the realm of England by 27 Hen. VIII. c. 26.

Monocracy, a government by one person.

Monogamy [fr. μόνος, Gk., single; and γάμος marriage], marriage of one husband to one wife.

Monomachy [fr. μόνος, Gk.; and μάχη, fight], a duel; a single combat.

It was anciently allowed by law, for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil law and canon laws.

Monomania, insanity upon a particular subject.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit pretium ad suum libitum statuens. 11 Co. 86.—(It is said to be monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.)

Monopolies, Statute of, 21 Jac. I. c. 3. See next title.

Monopoly [fr. μόνος, Gk., single; and πωλέω, to sell], the exclusive privilege of selling any commodity. A license or privilege allowed by the Crown, for the sole buying, selling, making, working, and using of anything whatsoever, whereby the subject is restrained from that liberty of manufacturing or trading which he had before.

Such grants were common before the Stuarts, and were very oppressive and injurious during the reign of Elizabeth. The grievance became so insupportable, that, notwithstanding the power of granting monopolies was a valuable part of the prerogative, they were abolished by the Statute of Monopolies, 21 Jac. I. c. 3, 1624, which declares all monopolies, grants, and letters-patent for the sole buying, selling, and making of goods and manufactures, null and void. It excepts patents for fourteen years for the sole working or making of any new manufactures within the realm, to the true and first inventors thereof, provided they be not contrary to law nor mischievous to the state; grants by Act of Parliament to any corporation, company, or society, for the enlargement of trade, and letters patent concerning the making of gunpowder. See LETTERS-PATENT.

A monopoly has three mischievous incidents: 1st, the raising of the price; 2nd, the deterioration of the commodity; 3rd, the impoverishing of poor artificers.—11 *Rep.* 86. See LETTERS-PATENT.

Monster. An animal which has not the shape of mankind, but, in any part, evidently bears the resemblance of the brute creation, has no inheritable blood, and cannot be heir to any land, although it be brought forth in marriage; but though it have deformity in any part of its body, yet, if it have human shape, it may be an heir.—*Co. Litt.* 7 *b.*; 2 *Bl. Com.* 246. And see 1 *Steph. Com.*; 2 *Br. & Had. Com.*

As monsters by excess are capable of living, so by the law of France they are capable of inheriting.

Monstrans de droit (*manifestation* or *plea of right*), one of the Common Law methods of obtaining possession or restitution from the Crown of either real or personal property. It was preferred either on the Common Law side of the Court of Chancery, or in the Exchequer, and will now come before any Division of the High Court.

Where the Crown is in possession under a title, the facts of which are already set forth upon record, a party aggrieved may proceed in *monstrans de droit*, i.e., may make, in opposition to such recorded title, a claim of right, grounded upon certain facts relied upon by him, without denying those relied upon by the Crown, and the praying judgment of the Court whether, upon those facts, the Crown or the subject has the right (36 Edw. III. c. 13; 2 & 3 Edw. VI. c. 8). If the right be determined against the Crown, the judgment is that of *ouster le main* or *amoveas manus*, by which judgment the Crown is instantly out of possession, and it therefore needs no actual execution. *Chit. Prerog. of the Crown*, 345.

Monstrans de faits ou records (*showing of deeds or records*).

Upon an action brought upon an obligation, after the plaintiff had declared he ought to have shown his obligation, and so also of records. *Monstrans de faits* differed from *oyer de faits* in that he who pleaded the deed or record, or declared upon it, ought to have shown it, and the defendant might demand *oyer* of the same.—*Cowel.*

Monstraverunt, a writ which lay for tenants in ancient demesne who held lands by free charter, when they were distrained

to do unto their lords other services and customs than they or their ancestors used to do. It is, however, abolished.

Monstrum, a box in which relics are kept; also, a muster of soldiers.—*Cowel.*

Montesquieu, the author of the *Esprit des Lois*, a work on civil institutions, both philosophical and elegant.

Month [fr. *monath*, Sax., moon, which was formerly written *mone*, as month was written *moneth*]. The period in which that planet *moneth*, i.e., completeth its orbit.—*Tooke.*

It is either—(1) *Lunar*, the time between the change and change, or the time in which the moon returns to the same point, being twenty-eight days.

(2) *Solar*, that period in which the sun passes through one of the twelve signs of the zodiac.

(3) *Calendar*, by which we reckon time, consisting unequally of thirty or thirty-one days, except February, which consists of twenty-eight, and in leap year of twenty-nine days. The calendar month is also called usual, natural, civil, political.

In an Act of Parliament, passed after 1850, the word month, which was formerly taken to mean a lunar month, unless calendar month was specified (*Cro. Eliz.* 133), means calendar month; unless words be added pointing to lunar months (Interpretation Act, 1889 (s. 3), repealing and re-enacting 13 Vict. c. 21). By the Common Law and in equity it is but twenty-eight days. In ecclesiastical matters it means a calendar month. By R. S. C. 1883, Ord. LVII., r. 1, it is provided that where the time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

By the rule of the commercial world a month is deemed, in cases of negotiable instruments, and in all commercial contracts, a calendar month.—*Story on Bills*; and this rule is applied to bills of exchange and promissory notes by s. 14, subs. 4, of the Bill of Exchange Act, 1882, 45 & 46 Vict. c. 61.

Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia. Co. Litt. 118. —(Monuments, which we call records, are the vestiges of truth and antiquity.)

Monya. See MONETAGIUM.

Mooktar, an agent or attorney.—*Indian.*

Mooktarnama, a written authority constituting an agent; a power of attorney.—*Ibid.*

Moor, an officer in the Isle of Man, who summons the courts for the several sheadings. The office is similar to our bailiff of a hundred.

Moot [fr. *gmot*, *emot*, Sax., meeting together], to plead a mock cause; to state a point of law by way of exercise, as was commonly done in the Inns of Court at appointed times, and has of late years been revived in Gray's Inn.—4 *Reeves*, 433, 574.

Moot-case, or **moot-point,** a point or case unsettled and disputable, such as properly affords a topic of disputation.

Moot-hall, or **moot-house,** council-chamber, hall of judgment, town-hall.

Moot-hills, hills of meeting, on which our British ancestors held their great courts.

Moot-man, one of those who used to argue the reader's cases in the Inns of Court. See MOOT-CASE.

Mop. See STATUTE-FAIR.

Mora, a moor, marsh land, a heath, fen land, barren and unprofitable ground.—*Co. Litt.* 5 *a.*

Mora mussa, a watery or boggy moor; a morass.—*Mon. Angl.*, tom. i., p. 306.

Mora reprobatur in lege. Jenk. Cent. 51. —(Delay is reproved in law.)

Moral actions, defined by Rutherforth to be those only in which men have knowledge to guide them and a will to choose for themselves.—*Inst. Nat. Law.* lib. 1. c. i.

Moral consideration. A mere moral consideration will not support a promise, and is nothing in law, per *Parke, B.*, 9 *M. & W.* 501. A subsequent express promise will not convert into a debt that which was not, of itself, a legal debt. See *Flight* v. *Reed*, 10 *Jur. N. S.* 1016, per *Wilde, B.*, and CONSIDERATION.

Moratur in lege, he demurs; because the party does not proceed in pleading, but rests or abides upon the judgment of the Court on a certain point, as to the legal sufficiency of his opponent's pleading. The Court deliberate and determine thereupon. See DEMURRER.

Moravians, otherwise called Herrnhutters or United Brethren. A sect of Christians exempted from military service in America by 22 Geo. II. c. 30, and allowed by that Act and by 3 & 4 Wm. IV. c. 49, and 1 & 2 Vict. c. 77, to give evidence on their solemn affirmation.

More or less (*sive plus sive minus*). These words in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate; for if there be a considerable deficiency, the purchaser will be entitled to an abatement.—*Hill* v. *Buckley*, 17 *Ves.* 394; and see *Cross* v. *Eglin*, 2 *B. & Ad.* 106; *Sugd. Vend. & Pur.*, 14th ed., 324.

Morganatic marriage. The lawful and inseparable conjunction of a man of noble or illustrious birth with a woman of inferior station, upon condition that neither the wife

nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony was regularly performed; the union was indissoluble; the children legitimate. This connection was very usual in Europe; but there is not proof that the concubines of Charlemagne and the early kings of France were wives of this description, nor is there occasion to resort to that supposition in defence of their conduct, since the state of concubinage itself was little inferior to this in the public estimation. See *Croke's Introd. to Horner* v. *Liddiard*, 115—117, A.D. 1800.

Morgangina, or **Morgangiva** [fr. *morgen*, Sax., the morning, and *gifan*, gift], a gift on the morning after the wedding; dowry; the husband's gifts to his wife on the day after the wedding.—*Du Cange; Cowel.*

Morina, murrain; also the wool of sick sheep, and those dead with the murrain.—*Fleta*, lib. 2. c. 79, par. 6.

Morling, or **Mortling**, wool from the skin of dead sheep.—3 *Jac. I.* c. 18; 14 *Car. II.* c, 88.

Mormonism, a social system prevailing in Utah, a territory of North America, within the dominion of the United States, whereby plurality of wives prevails. These marriages are not recognised by English law. See *L. R.* 1 *P. & D.* 130; 35 *L. J. P. & M.* 57. Nor are they legal according to the law of the United States.

Morosus, marshy. See MORA.

Mors dicitur ultimum supplicium. 3 Inst. 212.—(Death is denominated the extreme penalty.)

Morsellum, or **Morsellus terræ**, a small parcel or bit of land.—*Mon. Angl.* 282.

Mort d'Ancestor. See ASSISE OF MORT D'ANCESTOR.

Mortality. See BILLS OF MORTALITY.

Mortgage [fr. *mort*, Fr., dead, and *gage*, pledge], a dead pledge; a thing put into the hands of a creditor.

A mortgage is the creation of an interest in property, defeasible (i.e., annullable) upon performing the condition of paying a given sum of money, with interest thereon, at a certain time. This conditional assurance is resorted to when a debt has been incurred or a loan of money or credit effected, in order to secure either the repayment of the one or the liquidation of the other. The debtor, or borrower, is then the mortgagor, who has charged or transferred his property in favour of or to the creditor or lender, who thus becomes the mortgagee. If the mortgagor pay the debt, or loan, and interest within the time mentioned in a clause technically called the proviso for redemption, he will be entitled to have his property again free from the mortgagee's claim; but should he not comply with such proviso, the legal estate becomes perfected in the mortgagee, i.e., indefeasible, and so lost at the Common Law to the mortgagor. It is redeemable, however, in a court of equity upon the payment of the debt or loan, with interest and expenses, at any period within twenty years after the last recognition of the mortgage security by the mortgagee; and this because equity deems the non-compliance with the proviso for redemption a penalty, against which it always relieves when practicable.

Seeing that in by far the greater number of loan transactions the mortgagor never performs the condition in the proviso for redemption, they have been denominated mortgages, as the pledge is then dead or lost (*mortuum vadium*) to the mortgagor at law. A mortgage differs from a vifgage (*vivum vadium*), so called because neither loan nor property is lost, for the creditor enters into possession of the estate, and receives its proceeds in satisfaction of his debt, with interest, upon which the debtor becomes entitled to his own again. A Welsh mortgage is one in which the creditor receives the proceeds of his security in satisfaction of the interest of his debt, the principal remaining due and the estate never becoming forfeited, but redeemable at any time; and the creditor not being entitled to sue at law in the absence of a covenant or bond, or to foreclose in equity. When property is conveyed to a mortgagee and his heirs until out of its rents the loan and interest shall have been received, this is in the nature of a Welsh mortgage, and has been compared to a tenancy by *elegit*.

In order to protect a necessitous mortgagor from the exacting grasp of an inexorable mortgagee, equity will not suffer any compact whatever to infringe the right of redeeming a mortgage in its courts. The right or equity of redemption then is the chief and inseparable incident to a mortgage—an incident unextinguishable save by a foreclosure decree, a legislative provision, or unreasonable delay.

Every kind of property may be mortgaged except the salaries and emoluments of public functionaries: full pay and half pay of naval and military men; retiring allowance of a person liable to serve again, or of a servant of the East India Company; commissions in

the army; church livings with cure of souls, pursuant to 13 Eliz. c. 20, revived by 57 Geo. III. c. 99, which was not repealed by 1 & 2 Vict. c. 106, so far as it repealed any former Acts; and canonries or other ecclesiastical offices.

While an increase in the rate of interest upon default of regular payment is a penalty, and is not admissible, the reservation of a higher rate, with an abatement for punctual payment, may be made.

The 17 & 18 Vict. c. 113 provides that the heir or devisee of real estate shall not claim payment of mortgages out of personal assets; and the 30 & 31 Vict. c. 69 provides that in construing wills, a general direction to pay debts out of personalty shall not include mortgage debts, unless an intention to that effect be expressed or implied.

A mortgagor in possession or receipt of the rents and profits of any land, as to which the mortgagee has given no notice of intention to enter into possession or receipt of the rents and profits, may sue for such possession or such rents and profits, or to prevent or recover damage for any wrong thereto, in his own name only.—*Jud. Act*, 1873, s. 25 (5).

The Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. c. 41, by ss. 15—17, gives a mortgagor power to require the mortgagee to transfer the mortgage debt instead of reconveying it, power to inspect title deeds, and power to pay off one mortgage, where there are mortgages to the same person of different properties, without paying off the others.

The same Act (s. 18) confers on mortgagors and mortgagees in possession extensive powers of leasing, not existing at Common Law (see *Keech* v. *Hall*, 1 *Doug.* 21; *Franklinski* v. *Ball*, 34 *L. J. Ch.* 153), but commonly provided for before the Acts by the express terms of the mortgage deed. These sections are not retrospective.

The same Act (ss. 19—24) confers on mortgagees powers of sale, insurance, and to appoint a receiver. These sections are not retrospective, but they are an amplification of 23 & 24 Vict. c. 145, ss. 11—24, repealed by the Act.

The same Act (ss. 26—29) provides forms of 'Statutory Mortgages, Reconveyance, and Transfer,' and also (s. 57) short forms of mortgage and further charge.

All causes for redemption or foreclosure of mortgages are assigned to the Chancery Division of the High Court.—*Jud. Act*, 1873, s. 34.

Consult *Coote* or *Fisher on Mortgages*.

Mortgagee, he that takes a mortgage as security for a loan. See preceding title.

Mortgagor or **Mortgager**, he that gives a mortgage as security for a loan. See MORTGAGE.

Morth [Sax.], murder, answering exactly to the French *assassinat* or *muerte de guet-apens*.

Morthlaga, a murderer.—*Cowel*.

Morthlage, murder.—*Cowel*.

Mortification, a term of Scotch law, synonymous with the English 'mortmain.'

Mortis causâ donatio. See DONATIO MORTIS CAUSÂ.

Mortmain [fr. *mort*, Fr., dead, and *main*, hand], such a state of possession of land as makes it inalienable; whence it is said to be in a *dead hand*—in a hand that cannot shift away the property. Lands in mortmain are a dead weight upon commerce.

By several old statutes, alienation of lands and tenements in mortmain, i.e., to religious and other corporations, which were supposed to hold them in a dead or unserviceable hand, were prohibited under pain of forfeiture to the lord, the fruits of whose feudal seigniory (the great hinge of government in those days) were thus impaired. But either with or without the consent of the immediate lords (for this is doubtful), this forfeiture might be dispensed with by a *license in mortmain* from the Crown, which license was made sufficient without any such consent by 7 & 8 Wm. III. c. 37, repealed and re-enacted by the Consolidating Mortmain and Charitable Uses Act, 1888, 51 & 52 Vict. c. 42, which provides that 'land'—which term, by s. 10, includes 'tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest' (e.g., *a mortgage*) 'in land'—shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain otherwise than under the authority of a license from the Queen, or of a statute for the time being in force.

The license of the Sovereign, therefore, is necessary by law in all cases, except in the very numerous cases where, as by the Companies Act, 1862, s. 18, the necessity is dispensed with by the statute or charter constituting the corporation. In some cases a new restriction is imposed, e.g., Trade Unions may, by the Trade Union Act, 1871, s. 7, hold only one acre of land, and Art, etc., Societies registered under the Companies Act, 1862, may not, by s. 21 of that Act, hold more than two acres without the license of the Board of Trade.

The so-called 'Mortmain Act' is 9 Geo. II. c. 36. It provided that no land, or money to be laid out in land, might be given for any charitable use by will in any manner or in the lifetime of the donor except by deed executed twelve

months before the death of the donor, and enrolled six months after execution. This Act, as amended, is repealed and re-enacted with amendment by the Mortmain and Charitable Uses Act, 1888, 51 & 52 Vict. c. 42, but that Act has been extensively amended by the Mortmain and Charitable Uses Act, 1891, 54 & 55 Vict. c. 73, in the manner pointed out under the title CHARITABLE USES.

The 'Statute of Mortmain,' or '*De Viris Religiosis*,' is 7 Edw. I. Its object was to aid in enforcing the provisions of the great charter on the subject of alienation to religious societies, and to carry that restriction somewhat further.—2 *Reeves*, 154. This Act also is repealed by the Act of 1888. See further CHARITABLE USES.

Mortuary, a burial place; also a gift left by a man at his death to his parish church, for the recompense of his personal tithes and offerings not duly paid in his lifetime. Also, a kind of ecclesiastical heriot, being a customary gift claimed by and due to the minister in very many parishes, on the death of his parishioners. Like lay heriots, they were originally only voluntary bequests to the church. It was usual in ancient times to bring the mortuary to church along with the corpse when it was brought to be buried, and thence it is sometimes called a *corpse-present*. In the laws of Canute it was called *soul-scot* or *saule-sceat*, which signifies *pecunia sepulchralis* or *symbolum animæ*. The lord must have the best chattel left him as a heriot, and the church the second best as a mortuary.—2 *Br. & Had. Com.* 608. See further the statute 21 Hen. VIII. c. 6; 2 *Bl. Com.* 427; 4 *Reeves*, 207.

It has been sometimes used in a civil as well as in an ecclesiastical sense, and applied to a payment to the lord of the fee.—*Paroch. Antiq.* 478.

Also, a place for the reception of the bodies of persons who have died of infectious disease, etc., to which such bodies may, in certain cases, be removed by order of a justice of the peace. See Public Health Act, 1875, and Public Health (London) Act, 1891.

Mortuum vadium, a dead pledge or mortgage. See MORTGAGE.

Mos retinendus est fidelissimæ vetustatis. 4 Co. 78.—(A custom of the truest antiquity is to be retained.)

Mote, a meeting, an assembly. Used in composition as *burgmote*, *folkmote*, etc. See GEMOT.

Mote-bell, the bell which was used by the Saxons to summon people to the court. —*Cowel.*

Moteer, a customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege. —*Cowel.*

Mother-church [*primaria ecclesia*, Lat.]. See MATRIX ECCLESIA.

Mothering, a custom of visiting parents on Mid-Lent Sunday.—*Jacob.*

Motibilis, one that may be removed or displaced; also, a vagrant.—*Fleta*, l. 5, c. vi.

Motion, an occasional application to a Court by the parties or their counsel, in order to obtain some rule or order, which becomes necessary either in the progress of a cause, or summarily and wholly unconnected with plenary proceedings.

Motion for Judgment. By R. S. C. 1883, Ord. XL., it is provided that except where by the Act or rules of Court it is otherwise provided, the judgment of the Court shall be obtained by motion for judgment.

Motu proprio, the commencing words of a certain kind of Papal Rescript.

Moult, a mow of corn or hay.—*Paroch. Antiq.* 401.

Movables, goods, furniture, personalty.

Mulct, a fine of money or a penalty.

Mulier, (1) a woman; (2) a virgin; (3) a wife; (4) a legitimate child.—1 *Inst.* 243.

Mulier puisné, when a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

Mulieratus, a legitimate son.—*Glanv.*

Mulierty, lawful issue, because begotten *e muliere* (of a wife), and not *ex concubinâ*.—*Co. Litt.* 352.

Mullones fœni, cocks or ricks of hay.—*Cowel.*

Mulmutin laws. See MOLMUTIAN LAWS.

Mulneda, a place to build a water-mill.—*Mon.* ii. 284.

Multa, or **Multura, Episcopi**, a fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills; and that they might have the probate of other men's wills, and the granting of administrations.—2 *Inst.* 291.

Multa conceduntur per obliquum, quæ non conceduntur de directo. 6 Co. 47.—(Many things are indirectly conceded which are not conceded directly.)

Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris. 10 Co. 73. —(We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us.)

Multa in jure communi contra rationem disputandi, pro communi utilitate, introducta sunt. Co. Litt. 70.—(Many things contrary

to the rule of argument are introduced into the Common Law for common utility.)

Multa multo exercitatione facilius quam regulis percipies. 4 Inst. 50.—(You will perceive many things much more easily by practice than by rules.)

Multa non vetat lex, quæ tamen tacitè damnavit.—(The law forbids not many things which yet it has silently condemned.)

Multa transeunt cum universitate quæ non per se transeunt. Co. Litt. 12.—(Many things pass in the whole, which do not pass by themselves.)

Multifariousness. This, in a bill in equity, was the improperly joining in one bill distinct and independent matters, and thereby confounding them. For the former practice see *Story's Eq. Plead.* 224; and 1 *Dan. Ch. Prac.* 5th ed., and 2 *Wms. Saund.* 295, c. See now JOINDER OF CAUSES OF ACTION.

Multipartite [fr. *multus*, Lat., many, and *pars*, a part], divided into several parts.

Multiplepoinding, a proceeding in Scotch law, of the same nature as our INTERPLEADER.

Multiplex et indistinctum parit confusionem; et quæstiones quo simpliciores, eo lucidiores. Hob. 335.—(Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.)

Multiplicatâ transgressione crescat pœnæ inflictio. 2 Inst. 479.—(Let infliction of punishment increase with multiplied crime.)

Multiplicity. A bill in equity might have been objectionable for an undue dividing or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation. It would not, therefore, permit a bill to be brought for a part of a matter only where the whole was the proper subject of one suit. Upon a somewhat analogous ground, if an ancestor have made two mortgages, the heir will not be allowed to redeem one without the other; for in such a case the equity of the heir, like that of the ancestor, is to redeem the whole or neither.—*Story's Eq. Plead.* 234. See now Jud. Act, 1873, s. 24 (7); and as to inferior Courts, see ss. 89—91.

Multitude, an assembly of ten or more persons.—*Co. Litt.* 257.

Multitudinem decem faciunt. Co. Litt. 257. —(Ten make a multitude.)

Multitudo errantium non parit errori patrocinium. 11 Co. 75.—(The multitude of those who err gives no excuse to error.)

Multitudo imperitorum perdit curiam. 2 Inst. 219.—(A multitude of ignorant persons destroys a court.)

Multo, a wether sheep.—*Old Records.*

Multo fortiori. See A FORTIORI.

Multo utilius est pauca idonea effundere quam multis inutilibus homines gravari. 4 Co. 20.—(It is more useful to pour forth a few useful things than to oppress men with many useless things.)

Multure [fr. *moulture*, Fr.; fr. *molo*, Lat., to grind], a grist or grinding; the corn ground; also the toll or fee due for grinding.

Mumming. Antic diversions of the Christmas holidays, suppressed in Queen Anne's time. See 3 Hen. VIII. c. 9.

Mund, peace, whence *mundbryc*, a breach of the peace.—*Leg. H. I.*, c. 37.

Mundbyrd, Mundeburde, a receiving into favour and protection.—*Cowel.*

Munera, portions of lands distributed to tenants, and revocable at the lord's will, under our early feudal system.

Municipal [fr. *municipalis*, Lat., of *munus*, office, and *capio*, I take, or hold], belonging to a corporation.

Municipal Corporation. A body of persons in a town having the powers of acting as one person, of holding and transmitting property, and of regulating the government of the town. Such corporations existed in the chief towns of England (as of other countries) from very early times, deriving their authority from 'incorporating' charters granted by the Crown.

The Municipal Corporations Act, 1835, 5 & 6 Wm. IV. c. 76, passed after local inquiries by royal commissioners, completely re-organised the constitution of these corporations, and abrogated all charters inconsistent with it. This Act applied to 178 corporations named in the schedules thereto, and to 68 other corporations subsequently receiving a charter, a town to which it applied being styled a 'borough.'

The Act of 1835 was amended by a series of statutes passed from time to time, and finally consolidated by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, of which the following is the short effect:—

The 246 places to which the Act applied and the other places, e.g., Croydon, to which it, when passed, was afterwards applied, are to a great extent under the control of a municipal corporation, consisting of the 'mayor, aldermen, and burgesses,' and acting through a 'council' elected by the burgesses.

The burgesses consist of all resident householders who have occupied and paid rates for twelve months prior to any July, and have also been enrolled as burgesses.

The councillors are elected by the burgesses on every 1st of November. Their term of office is three years, and one-third of their number goes out of office every year. If the election be contested the poll is taken by

ballot, under the Ballot Act, 1872. The aldermen, in number one-third of the number of councillors (and not necessarily burgesses), are elected by the council. They remain in office six years, one-half of their number going out of office every third year. The mayor is elected for one year by the council from among the aldermen or councillors, or persons qualified to be such. He receives little, if any, salary. The aldermen and councillors serve gratuitously.

The council thus constituted manages the corporate property, having as officers a 'town clerk,' a 'treasurer,' and such other officers as the council think necessary. It has the control of the borough police, and power to levy a borough-rate and a watch-rate, and, by s. 23, to make bye-laws 'for the good rule and government of the borough, and for the suppression of nuisances *not already punishable in a summary manner by virtue of any Act in force throughout the borough*,' e.g., by the Public Health Act, 1875, ss. 47, 80, and 91, or by other public Act, or by one of the many local Acts in force in most of the larger boroughs. The council is also 'urban authority,' administering local government under the Public Health Act, 1875, 'school attendance committee' under the Elementary Education Act, 1876, and local authority under numerous other Acts.

In most of the larger boroughs there is a separate commission of the peace, excluding the jurisdiction of the county justices, and a separate Court of Quarter Sessions, presided over by a 'recorder,' having the same jurisdiction in the borough as the justices in County Quarter Sessions have for the county. A separate commission and a separate Court of Quarter Sessions may also be granted by the Crown on petition of the council to such boroughs as do not possess them. Where there is a separate Court of Quarter Sessions, there is also a borough coroner, appointed by the council.

A considerable number of small 'unreformed corporations,' in which there was a mayor and other corporation officers, were either abolished or brought under the provisions of the Municipal Corporations Act, 1882, by the Municipal Corporations Act, 1883, 46 & 47 Vict. c. 18; and the Local Government Act, 1888 (see COUNTY COUNCIL), has applied the Act generally.

Municipal Law, that which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations.

Muniment, support, defence, record; writing upon which claims and rights are founded and depend; evidences, charters.

Muniment-house, or **Muniment-room,** a house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, etc., purposely made for keeping deeds, charters, writings, etc.—3 *Inst.* 170.

Munitions of war. As to keeping secret patents for their invention, see 22 Vict. c. 13. As to supplying such to foreign states at peace with this country, for the purpose of hostilities between themselves, see 33 & 34 Vict. c. 90.

Murage [fr. *murus*, Lat., a wall], money paid to keep walls in repair.—*Cowel.*

Muratio, a town or borough surrounded with walls.—*Jacob.*

Murder [fr. *morthor*, *morthen*, Sax.; *murdrum*, law Lat. The etymology requires that it should be written, as it anciently often was, *murther*; but of late the word itself has commonly, and its derivatives have universally, been written with *d*.—*Dr. Johnson*]. It is thus defined by Coke (3 Inst. 47), 'When a person of sound memory and discretion unlawfully killeth any reasonable creature in being, with malice aforethought, either express or implied.' Consult *Russell on Crimes.*

(1) The person committing the offence must be of sound memory and discretion, for children and insane people are incapable of committing any crime, unless they evince a consciousness of doing wrong, and a discernment betweed good and evil. See IDIOTS and LUNATICS.

(2) It must be an unlawful killing by any means which superinduces death within a year and a day after the cause of death administered.

(3) The person killed must be a reasonable creature in being, and under the Queen's peace.

(4) The killing must be with malice aforethought.

'Every person convicted of murder shall suffer death as a felon.'—24 & 25 *Vict.* c. 100, s. 1; and see EXECUTION OF CRIMINALS.

Murdrum, the secret killing of another, also the amerciament to which the vill wherein it was committed, or, if that were too poor, the whole hundred, was liable.

As to the rates of compensation for murder amongst the Anglo-Saxons, see 2 *Hall. Mid. Ages*, 275.

Muriatic Acid Gas, protection from exhalations of. See ALKALI WORKS.

Murorum operatio, the service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage* (*q.v.*).—*Cowel.*

Murthlach. See MORTLAGE.

Museum. A building or institution for

the cultivation of science, favoured by the legislature in the Public Libraries Acts, in 34 Vict. c. 13, and in the Museums and Gymnasiums Act, 1891, 54 & 55 Vict. c. 22.

Music, Copyright in. See 5 & 6 Vict. c. 45; 45 & 46 Vict. c. 40; and 51 & 52 Vict. c. 17; by which two latter Acts the public are protected from vexatious proceedings for the recovery of penalties for the unauthorised performance of musical compositions; and see COPYRIGHT.

Music and Dancing Licenses. The grant of these in London and Westminster and within twenty miles thereof is regulated by 25 Geo. II. c. 36, which enacted that any house kept for public dancing, music, or other public entertainment of the like kind without a license from *justices*, is to be deemed a disorderly house; and by s. 3 of the Local Government Act, 1888, which transferred the licensing powers from justices to the London County Council. The same Act prohibited the opening of such houses, even though licensed, before 5 p.m.; but this prohibition, which was frequently disregarded, was removed by 38 & 39 Vict. c. 21, which substitutes '*noon*' for '5 p.m.'

Various local Acts in large towns (see *Geary on the Law of Public Entertainments*) regulate music halls, etc., somewhat similarly; and the Local Government Act, 1888, substitutes the County Council for the justices as the licensing authority.

Under the 'adoptive' Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59, part 3, if and where adopted, a house or garden, whether licensed for the sale of liquor or not, may not be kept for 'public dancing, singing, music or other public entertainment of the like kind,' without a license from the justices having power to grant licenses for the sale of intoxicating liquor.

Mussa, a moss or marsh ground; or a place where sedges grow; a place overrun with moss.—*Cowel.*

Muster-book, a book in which the forces are registered.—*Termes de la Ley.*

Muster-master, one who superintended the muster to prevent frauds.—35 *Eliz.* c. 4.

Muta-canum, a kennel of hounds, one of the mortuaries to which the Crown was entitled at a bishop's or abbot's decease.—2 *Bl. Com.* 426.

Mutatis-mutandis. With the necessary changes in points of detail.

Mute of malice, used of one who abstains from pleading to an indictment when he is able to do so. See PEINE FORTE ET DURE.

Mutilation, deprivation of a limb or any essential part. See MAYHEM.

Mutiny Act, a statute annually passed from 1689 to 1879, 'to punish mutiny and desertion, and for the better payment of the army and their quarters.' See ARMY.

Mutseddey, mutseddee, intent upon; also writer, accountant, or secretary.—*Indian.*

Mutual debts, money due on both sides between two persons.—See SET-OFF.

Mutual promises, concurrent considerations, which will support each other, unless one or the other be void; in which case, there being no consideration on the one side, no contract can arise. But if the promise on one side be only voidable, as in consideration of money given, or of a promise by an infant, it is sufficient.

Mutual promises, however, to be obligatory, must be made simultaneously. If they be made at different times on the same day they will not be a good consideration for each other because of the want of reciprocity of obligation, at the moment the contract is made.—*Story on Contracts*, 81.

Mutual testament, wills made by two persons who leave their effects reciprocally to the survivor.

Mutuality, reciprocation; the state of things in which one person being bound to perform some duty or service or act for another, that other on his side is bound to do something for the former.

The most notable instances of contracts in which there is no mutuality, is where the memorandum required by the 17th section of the Statute of Frauds is signed by one only of the contracting parties, for there the party who has signed can be sued for not performing his part, but the other cannot.

Mutuation, the act of borrowing.

Mutuo, to borrow.

Mutus, silent, not having anything to say.

Standing mute is when a person, being arraigned, either cannot speak, or refuses to answer or plead. See PEINE FORTE ET DURE.

To advise a prisoner to stand mute is a contempt of court.

Mutus et surdus (*dumb and deaf*).

Mutuum, a loan, whereby the absolute property in the thing lent passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower; for it is his property, and he must restore the equivalent in kind; the maxim *eju sest periculum, cujus est dominium*, applying to such cases.

In a *mutuum* the property passes immediately from the *mutuant* or lender to the *mutuary* or borrower, and the identical thing

lent cannot be recovered or redemanded.—*Jones on Bailm.* 64.

Mynster-ham (*ecclesiæ mansio*, Lat.), monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals.—*Anc. Inst. Eng.*

Mystery [fr. *mestier*, Fr.], an art, trade, or occupation.—*Cowel.*

N.

Naam [fr. *nam*, Sax., to take], the attaching or taking of movable goods and chattels, called *vif* or *mort* according as the chattels were living or dead.—*Termes de la Ley.*

Nabob, Nawab; originally the governor of a province under the Mogul government of Hindostan, 'whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it (*Wilson's Indian Glossary*).—*Indian.*

Naib, a deputy.—*Ibid.*

Nail, a measure of two inches and a quarter.

Nam, distress; seizure.—*Anc. Inst. Eng.*

Namation, the act of distraining or taking a distress.—*Cowel.*

Name [fr. *namo*, Goth.; *nama*, Sax.; *naem*, Dut.], the discriminative appellation of an individual.

Proper names are either *Christian names*, as being given at baptism, or *surnames*, from the father.—4 *Rep.* 170.

Names of persons not christened are surnames only.—1 *Lord Raym.* 305. As to the name of a bastard, see *Co. Litt.* 36, and 1 *Moo. C. C.* 402. A man may have divers names at divers times, but not divers Christian names.—2 *Bro. C. C.* 170. Any one may take on himself whatever surname or as many surnames as he pleases, without an Act of Parliament or royal license. See *Falconer on Surnames*, and refer to 3 *M. & S.* 250.

Namium, a distress.—2 *Inst.* 140.

Namium vetitum, an unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them.—3 *Bl. Com.* 149. See REPLEVIN.

Nantes, Edict of, for the security of Protestants, made by Hen. IV. of France, and revoked by Louis XIV., Oct. 2, 1685.

Narr [abbrev. of *narratio*, Lat.], a declaration in an action.—*Jacob.*

Narratio, a count, a declaration.

Narrator, a pleader, or reporter.—*Cowel.*

Narrow seas, those running between two coasts not far apart. The term is sometimes applied to the English Channel.

Natale, the state and condition of a man.

Nathwyte. See LAIRWITE.

Nation, a people distinguished from another people, generally by their language, origin, or government; an assembly of men of free condition, as distinguished from a family of slaves.

National Church, the Protestant church of England, of which the sovereign is the head and supreme governor.—26 *Hen. VIII.* c. 1; 1 *Eliz.* c. 1.

National debt, the money owing by government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public. It is regulated by the 'National Debt Act, 1870.' See FUNDS.

Nations, Law of. See INTERNATIONAL LAW. The principal offences against the law of nations are: (1) Violations of safe conducts; (2) Infringement of the rights of ambassadors: and (3) Piracy. See the works of *Grotius*, *Vattel*, and others.

Nativi conventionarii, villeins or bondmen by contract or agreement.—*Leg. H. I.* c. 76.

Nativi de stipite, villeins or bondmen by birth or stock.—*Cowel.*

Nativitas [fr. *neifty*], the servitude, bondage, or villeinage of woman.—*Leg. Wm. I.*

Nativo habendo, a writ that lay to a sheriff from a lord who claimed inheritance in any villein, when his villein had absconded, for the apprehending and restoring him to such lord. It was in the nature of a writ of right to recover inheritance in a villein; upon which the lord pursued his plaint, and declared thereupon, and the villein made his defence, so that the question of freedom was tried and determined.—*F. N. B.* 77.

Nativus, a servant born.—*Spelm.*

Natura appetit perfectum; ita et lex. Hob. 144.—(Nature desires perfection; so also law.)

Natura non facit saltum; ita, nec lex. Co. Litt. 238.—(Nature takes no leap; so neither does law.)

Natura non facit vacuum, nec lex supervacuum. Co. Litt. 79.—(Nature makes no vacuum; law no supervacuum.)

Naturæ vis maxima; natura bis maxima. 2 Inst. 564.—(The force of nature is greatest; nature is doubly greatest.)

Natura Brevium. See *Fitzherbert.*

Natural affection, that love which one has for his kindred. It is held to be a good consideration for certain purposes. See CONSIDERATION; COVENANT TO STAND SEISED.

Natural allegiance, that perpetual attachment which is due from all natural-born subjects to their sovereign; it differs from *local* allegiance, which is temporary only, being due from an alien or stranger born for so long a

time as he continues within the sovereign's dominions and protection.—*Fost.* 184.

Natural-born subjects, those that are born within the dominions of the Crown of England, i.e., within the allegiance of the sovereign. See ALIEN.

Natural child, the child in fact, the child of one's body. Some children are both the natural and legitimate offspring of a marriage, i.e., those duly born in wedlock. Some are the legitimate but not the natural offspring of a marriage, i.e., those who are born in wedlock, and never bastardized, although begotten in adultery and the *natural* children of a stranger. See Shakespeare's *King John*, act i., sc. 1.

Some are natural children only; i.e., bastards, born out of wedlock, and those born in wedlock, who are bastardized, and hence the word is popularly more often used as though it were simply equivalent to bastard. See BASTARD and BASTARDIZE.

Natural equity. See EQUITY.

Natural infancy, a period of non-responsible life, which ends with the seventh year of a person's age.

Natural liberty. See LIBERTY.

Natural obligations, duties which have a definite object, but are not subject to any legal necessity.

Natural persons, such as we are formed by the Deity, as distinguished from *artificial* persons or corporations, formed by human laws, for purposes of society and government.

Naturale est quidlibet dissolvi eo modo quo ligatur. Jenk. Cent. 66.—(It is natural for a thing to be unbound in the same way in which it was bound.) See *Broom's Legal Maxims*, 6th ed., 833.

Naturalization, investing aliens with the privileges of native subjects. See ALIEN.

Nature, Guardianship by. See GUARDIAN.

Nature, Law of, certain rules of conduct supposed to be so just that they are binding upon all mankind. See NATIONS, LAW OF, and consult *Maine's Ancient Law.*

Naufrage, shipwreck.

Naulage [fr. *naulum*, Lat.], the freight of passengers in a ship.—*Johns.; Webster.*

Nautæ [Lat.], sailors, carriers by water.

Navagium, a duty on certain tenants to carry their lord's goods in a ship.—*Mon. Angl.* i. 922.

Naval and Mercantile Savings Banks, established for sailors and mariners by 17 & 18 Vict. c. 104; 18 & 19 Vict. c. 91; and 19 & 20 Vict. c. 41; and see 29 & 30 Vict. c. 43.

Naval and Victualling Stores Act, 1862, 25 & 26 Vict. c. 64; and see 32 & 33 Vict. c. 12.

Naval Courts Martial. See 29 & 30 Vict. c. 109, ss. 58—69.

Navicularis [Lat.], a sea captain.

Navigation Acts were various enactments passed for the protection of British shipping and commerce as against foreign countries. For a sketch of their history and operation, see 3 *Steph. Com.* They are now repealed. See 16 & 17 Vict. c. 107, and 17 & 18 Vict. cc. 5 and 120.

Navy [fr. *navis*, Lat., a ship], an assemblage of ships, commonly ships of war; a fleet.

The discipline of the navy was formerly regulated by certain express rules, articles, and orders, first enacted by the authority of parliament soon after the Restoration, but it is now regulated by 'The Naval Discipline Act, 1861,' 24 & 25 Vict. c. 115 (see NAVAL DISCIPLINE ACT). As to the enlistment of seamen, see 5 & 6 Wm. IV. c. 24; 16 & 17 Vict. c. 69; and 26 & 27 Vict. c. 9; and see also 17 & 18 Vict. c. 104; ss. 214—220. As to protection of naval stores, see PUBLIC STORES.

Navy and Marines (Wills) Act, 28 & 29 Vict. c. 72. See NUNCUPATIVE WILL.

Navy Bills, bills drawn by officers of the royal navy for their pay, etc. It is a felony to forge them. See FORGERY.

Navy Prize Agents Acts, 1863, 26 & 27 Vict. c. 116; 27 & 28 Vict. cc. 23 & 24.

Nazeranna, a sum paid to government as an acknowledgment for a grant of lands, or any public office.—*Encyc. Lond.*

Nazim, composer, arranger, adjuster. The first officer of a province, and minister of the department of criminal justice.—*Indian.*

Ne admittas (*that you admit not*), a prohibitory writ directed to the bishop at the request of the plaintiff or defendant, where a *quare impedit* is depending, when either party fears that the bishop will admit the other's clerk during the suit between them; it ought to be issued within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present has devolved upon the bishop.—*F. N. B.* 37.

Neat, or **Net,** the weight of a pure commodity alone, without the cask, bag, dross, etc.—*Com. term.*

Neat Cattle, oxen or heifers.

Neat-land, land let out to the yeomanry.—*Cowel.*

Ne baila pas (*he did not deliver*).

Necation [fr. *neco*, Lat.], the act of killing.

Necessaries, a relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed literally, and varying with the state and degree, the rank, fortune, and age of the person to whom they are supplied. It has often been held that an infant is bound

to pay a reasonable price for such necessary things as relate to his maintenance and education—as for food, lodging, apparel, medical attendance, and schooling—unless credit be given solely to the parent, which is presumed to be the fact, if it appear that the infant was placed at school, or is supported by him. See INFANT.

While a husband and wife live together, and the goods supplied to the wife are necessaries, both in quality and quantity, the law raises a presumption of assent on the part of the husband to the contract, and renders him liable upon it. See HUSBAND AND WIFE.

Necessarium est quod non potest aliter se habere. Bacon.—(That which is necessary cannot be otherwise.)

Necessitas culpabilis (*a blamable necessity*).

Necessitas est lex temporis et loci. Hales H. P. C. 54.—(Necessity is the law of time and place.)

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Bacon.—(Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil cases.)

Necessitas facit licitum quod alias non est licitum. 10 Co. 61.—(Necessity makes that lawful which otherwise is not lawful.)

Necessitas inducit privilegium quoad jura privata. Bac. Max. 25.—(Necessity gives a privilege with reference to private rights.)

The necessity involved in this maxim is of three kinds, viz. :—1st, Necessity of self-preservation; 2nd, of obedience; and 3rd, necessity resulting from the act of God, or of a stranger.—*Noy's Max.* 32. See *Broom's Leg. Max.*, 6th ed., 9.

Necessitas non habet legem. Plow. 18.—(Necessity has no law.)

Necessitas publica major est quam privata. Bacon.—(Public necessity is greater than private.)

Necessitas quod cogit, defendit. Hale's H. P.C. 54.—(Necessity defends what it compels.)

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. 2 Inst. 326.—(Necessity is not restrained by law; since, what otherwise is not lawful, necessity makes lawful.)

Necessitas vincit legem; legum vincula irridet. Hob. 144.—(Necessity overcomes law; it derides the fetters of laws.)

Necessity, homicide by, a species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death who has forfeited his life to the laws of his country. And see JUSTIFIABLE HOMICIDE.

Neck-verse, the Latin sentence *miserere mei Deus,* Psalm li. 1, because the reading of it was made a test by which to distinguish those who, in presumption of law, were qualified, in point of learning, and admissible to benefit of clergy.

Nec tempus nec locus occurrit regi. Jenk. Cent. 190.—(Neither time nor place affects the king.)

Ne disturba pas, the general issue in *quare impedit.* It simply denied that the defendant obstructed the presentation, and was adapted to no other ground of defence. See now C. L. P. Act, 1860, ss. 26, 27, and PLEADING.

Ne dona pas, or **non dedit,** the general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged: and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case.—5 *East.* 289.

Ne exeat regno, sometimes termed *ne exeat regnum.* When a person who owes an actually due equitable debt, or fails to pay alimony in Court for Divorce, meditates a departure from the realm, the creditor or wife may file a bill, and pray for a writ of *ne exeat regno* in order to prevent his flight.

This writ was framed originally to deter the clergy from leaving the country without the royal license, on account of the jealousy of any intercourse between the English ecclesiastics and the Papal See.

It will not be granted at the instance of a plaintiff resident abroad.

This writ must generally have been prayed for by bill, but the defendant's intention to go abroad might arise or be discovered during the suit, and then the writ would be granted at once. A defendant might obtain the writ without filing a bill, against a plaintiff ordered to pay a certain sum of money. It is obtained upon a motion *ex parte,* supported by an affidavit, which must state the defendant's intention to go abroad; and it must state expressly that the debt or property would be endangered by the defendant's quitting the kingdom. It cannot be sworn before the plaintiff's solicitor. The writ is delivered to the sheriff in whose country the defendant is; and he causes the party to be arrested, in effecting which outer doors must not be broken open. See now ACTION.

He may obtain his enlargement by depositing the amount with the sheriff or by executing a bond with two sufficient sureties,

to the sheriff, in double the sum conditioned not to go or to attempt to go into parts beyond the seas, or into Scotland, without the leave of the Court. The sheriff, after he has executed the writ, returns it either by saying that he has taken a deposit of the amount, or the defendant has found bail, etc. An application to discharge the writ for irregularity, or that it was improperly granted, might be made before answer, but must have been supported by affidavit; after answer, it was usually on the merits therein disclosed, unless the writ was granted upon matter subsequent to answer, when the application may be supported by affidavit. The Court will discharge the writ upon the defendant paying into court the amount, and the writ will be discharged should the plaintiff have no case, or the defendant be not going abroad, either absolutely or conditionally, i.e., by giving security to submit to the decree of the Court. As for the corresponding remedy at Common Law, see CAPIAS. See 15 & 16 Vict. c. 86, s. 6; *Consol. Ord.*, 1860, i., r. 38; xxxvi. r. 9; *Beame's Brief View of the Writ.* Consult 2 *Dan. Ch. Pr.*, 4th ed., 1536—1551.

Negatio conclusionis est error in lege. Wing. 268.—(The denial of a conclusion is error in law.)

Negatio destruit negationem et ambæ factiunt affirmativum. Co. Litt. 146.—(A negative destroys a negative, and both make an affirmative.)

Negatio duplex est affirmatio.—(A double negative is an affirmative.)

Negative. In general a negative cannot be proved or testified by witnesses.—2 *Inst.* 662. But this rule does not apply where one party charges another with a culpable omission or breach of duty; in such a case, the person who makes the charge is bound to prove it, though it may involve a negative, for it is one of the first principles of justice not to presume that a person has acted illegally till the contrary is proved. Where the presumption of law is in favour of a defendant, then the plaintiff must disprove the defence, though he may have to prove a negative.—1 *Phil. Evid.* c. vii., s. 4. It is a pleading rule that two negatives do not make a good issue. See as to pleading a negative in equity, *Story's Eq. Pl.* 507.

Negative pregnant, a form of denial which implies or carries with it an affirmative. As to its former effect in pleading, see *Steph. Plead.*, 7th ed., 340.

Neggildare, to claim kindred.—*Jacob.*

Negligence, acting carelessly. There are generally considered to be three degrees of negligence: (1) ordinary, which is the want of ordinary diligence; (2) slight, the want of great diligence; and (3) gross, the want of slight diligence. But 'gross negligence' has been defined to be 'only ordinary negligence with a vituperative epithet.' See per *Rolfe B.* in *Wilson* v. *Brett*, 11 *M. & W.* 113, and see also *L. R.* 1 *C. P.* 612.

So in the civil law there are three degrees of negligence: (1) *lata culpa*, gross neglect; (2) *levis culpa*, ordinary neglect; and (3) *levissima culpa*, slight neglect.—*Halifax, C. L.* 61.

The question of negligence is usually one of fact for a jury. The question may be one of law, where the case falls within a general settled rule or principle; or of fact, where no such rule or principle is applicable, and where the conclusion of negligence must be found or excluded by the jury.

The onus of proving negligence rests on the plaintiff, except where *res ipsa loquitur*, i.e., where the thing resulting from it speaks for itself. See *Scott* v. *Lond. Dock Co.*, 34 *L. J. Exch.*, 17, 220.

If the plaintiff have been guilty of contributory negligence, in other words, if with ordinary care he might have avoided the consequence of the defendant's negligence, he cannot recover.

A master is responsible to the public, and also, under certain conditions, to a fellow-servant, for the negligence of his servant acting in the execution of his master's business. See MASTER and SERVANT.

An action for negligence causing death passes to the representative or next of kin of the deceased, by 9 & 10 Vict. c. 93, and 27 & 28 Vict. c. 95.

Negligent escape, where a person escapes from the custody of the sheriff or other officer. See ESCAPE.

Negligentia semper habet infortunium comitem. Co. Litt. 246.—(Negligence always has misfortune for a companion.)

Negoce [fr. *negotium*, Lat.], business, trade, management of affairs.

Negotiable instruments, those the right of action upon which is, by exception from the common rule, freely assignable from one to another, such as bills of exchange and promissory notes. See also title CHOSE.

Promissory notes were made negotiable by 3 & 4 Anne c. 9, and 7 Anne c. 25, and placed in all respects upon the same footing with inland bills of exchange.

By 26 & 27 Vict. c. 105,—a temporary Act, continued from time to time by successive 'Expiring Laws' Continuance Acts,'—the restrictions on the negotiation of bills of exchange and promissory notes for the payment of 20*s.* and less than 5*l.*, or upon which

20*s.* and less than 5*l.* is undischarged, are repealed.

The Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, ss. 31—38, contains the law as to negotiation of bills of exchange, promissory notes, and cheques. Section 31 declares that these instruments are negotiated when they are transferred from one person to another in such a manner as to constitute the transferee the holder of them, and section 32 enumerates the conditions under which an indorsement may operate as a negotiation, as that the indorsement must be written on the bill itself, and be signed by the indorsér, and must be an indorsement of the entire bill.

Negotiation, treaty of business whether public or private.

Negotiorum gestor, a person who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, etc.

In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract. But the Roman law raises a *quasi* mandate, by implication, for the benefit of the owner in many of such cases. Nor is an implication of this sort wholly unknown to the Common Law, where there has been a subsequent ratification of the acts by the owner; and sometimes where unauthorised acts are done, positive presumptions are made by law for the benefit of particular parties. Thus, if a stranger enter upon a minor's lands, and take the profits, the law will, in many cases, oblige him to account to the minor for the profits as his bailiff; for it will be presumed that he entered to take them in trust for the infant.

As the *negotiorum gestor* interferes without any actual mandate, there is good reason for requiring him to exert the requisite skill and knowledge to accomplish the object or business which he undertakes; to do everything which is incident to or dependent upon that object or business, and to finish whatever he has begun. Without such an obligation every person in the community would be at the mercy of ignorant and officious friends.—*Story's Bailments.*

Neife, a woman born in villenage.—2 *Bl. Com.* 94.

Neifty. See NATIVITAS.

Ne injuste vexes, a writ founded on Magna Charta that lay for a tenant distrained by his lord, for more services than he ought to perform; and it was a prohibition to the lord unjustly to distrain or vex his tenant; in a special use it was where the tenant had prejudiced himself by doing greater services or paying more rent without constraint, than he needed; for, in that case, by reason of the lord's seisin, the tenant could not avoid it by avowry, but was driven to his writ for remedy.—*F. N. B.* 10. (Abolished by 3 & 4 Wm. IV. c. 27, s. 35.)

Ne luminibus officiatur, a servitude restraining the owner of a house from obstructing the light of his neighbour.

Nembda [Teut.], a jury.—3 *Bl. Com.*, 350.

Nemine contradicente, abbrev. *nem. con.* [Lat.], the phrase to signify the unanimous consent of the Members of the House of Commons to a vote or resolution; it is analogous to the term *nemine dissentiente* (*nem. dis.*) in the House of Peers.

Nemo agit in seipsum. Jenk. Cent. 40.—(No one impleads himself.) Consult *Broom's Leg. Max.*, 6th ed., 210.

Nemo allegans suam turpitudinem est audiendus. Civil Law Maxim.—(No one alleging his own baseness is to be heard.) The courts of law have properly rejected this as a rule of evidence.—7 *T. R.* 601.

Nemo contra factum suum venire potest. 2 Inst. 66.—(No one can go against his own deed.) See ESTOPPEL.

Nemo cogitur rem suam vendere, etiam justo pretio. 4 Inst. 275.—(No person is obliged to sell his own property even for the full value.) See LANDS CLAUSES ACT.

Nemo dat qui non habet. Jenk. Cent. 250.—(He who hath not cannot give.) See per *Willes, J.*, in *Chidell* v. *Galsworthy*, 6 *C. B. N. S.* 478.

Nemo dat quod non habet. (No one can give that which he has not. In other words, No one can give a better title than he has.) Consult *Broom's Leg. Max.*, 6th ed., 761.

Nemo debet bis puniri pro uno delicto. 4 Rep. 40, 43.—(No one ought to be punished twice for the same offence.)

Nemo debet bis vexari, si constat curiæ quod sit pro undâ et eâdem causâ. 5 Co. 61.—(No man ought to be twice put to trouble, if it appear to the Court that it is for one and the same cause.) In civil actions, the general rule is, that the judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. The exception to this rule is in the action of ejectment.—2 *Selw. N. P.* 763.

It is also well established in the criminal law, that when a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment.—*Arch. Cr. Plead.*, 18th ed.

Nemo debet esse judex in propriâ causâ. 12 Co. 113.—(No one should be judge in his own cause.) Consult *Broom's Legal Max.*, 6th ed., 110, and see *Dimes* v. *Grand Junction Canal Co.*, 3 *H. L. C.* 759, in which the judgment of Lord Chancellor Cottenham was set aside on the ground of his having been a shareholder in the defendant company.

Nemo debet locupletari alienâ jacturâ. (No one ought to be enriched by another's disaster.) Cited per *Bovill, C. J.*, in *Fletcher* v. *Alexander, L. R.* 3 *C. P.* 381.

Nemo debet locupletari ex alterius incommodo. Jenk. Cent. 4.—(No one ought to be enriched out of the misfortune of another.)

Nemo de domo suâ extrahi potest. D. 50, 17, 103.—(No one can be dragged out of his own house. In other words, Every man's house is his castle.) See *Broom's Leg. Max.*, 6th ed., 404.

Nemo ejusdem tenementi simul potest esse hæres et dominus.—(No one can at the same time be the heir and the owner of the same tenement.) See 1 *Reeves*, 106.

Nemo aliquam partem rectè intelligere potest antequam totum iterum atque iterum perlegerit. Broom's Leg. Max., 6th ed., 547. —(No one is able rightly to understand one part before he has again and again read through the whole.)

Nemo est hæres viventis. Co. Litt. 8.—(No one is the heir of a living man.)

Nemo ex alterius facto prægravari debet.—(No one ought to be burdened by the act of another.) Consult 1 *Pothier, by Evans*, 133.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat. Jur. Civ.—(Let no one be relieved or gain an advantage by his own fraud.) This rule is set aside in certain cases by several positive enactments of the legislature, as the Statute of Frauds, the Marriage Act, 3 & 4 Geo. IV. c. 76, s. 22. But the judges always lean towards giving effect to the maxim of the civil law. See *Broom's Leg. Max.*

Nemo ex proprio dolo consequitur actionem. Broom's Leg. Max., 6th ed., 289.—(No one maintains an action arising out of his own wrong.)

Nemo ex suo delicto meliorem suam conditionem facere potest.—(No one can make his condition better by his own misdeed.)

Nemo nascitur artifex. Co. Litt. 97.—(No one is born an artificer.)

Nemo patriam in quâ natus est exuere nec ligeantiæ debitum ejurare possit. Co. Litt. 129.—(No man can disclaim the country in which he was born, nor abjure the bond of allegiance.) See EXPATRIATION.

Nemo potest contra recordum verificare per patriam. 2 Inst. 380.—(No one can verify by the country [i.e., by jury] against a record.)

Nemo potest esse simul actor et judex. Broom's Max., 6th ed., 111.—(No one can be at once suitor and judge.)

Nemo potest esse tenens et dominus. Gilb. Ten. 142.—(No one can be tenant and lord.)

Nemo potest facere per alium, quod per se non potest. Jenk. 237.—(No one can do through another what he cannot do through himself.)

Nemo potest mutare consilium suum in alterius injuriam.—No one can change his purpose to the injury of another.) See *Broom's Max.*, 6th ed., 28.

Nemo potest plus juris ad alium transferre quam ipse habet. Co. Litt. 309; Wing. 56. —(No one can transfer a greater right to another than he himself has.)

Nemo præsumitur alienam posteritatem suæ prætulisse. Wing. 285.—(No one is presumed to prefer the posterity of another to his own.)

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. 6 Co. 76.—No one is presumed to be forgetful of his own eternal welfare; and particularly at the point of death.)

Nemo præsumitur malus.—(No one is presumed to be bad.)

Nemo præsumitur ludere in extremis.—(No one is presumed to trifle at the point of death.)

Nemo prohibetur plures negotiationes sive artes exercere. 11 Co. 54.—(No one is restrained from exercising several businesses or arts.)

Nemo punitur pro alieno delicto.—Wing. 336.—(No one is punished for another's wrong.)

Nemo punitur sine injuriâ, facto, seu defalto. 2 Inst. 287.—(No one is punished unless for some injury, deed, or default.)

Nemo sibi esse judex vel suis jus dicere debet. —(No one ought to be his own judge, or the tribunal in his own affairs.) See '*Nemo debet esse judex in propriâ causâ,*' *supra.*

Nemo tenetur ad impossibile. Jenk. Cent. 7.—(No one is bound to an impossibility.)

Nemo tenetur armare adversarium contra se. Wing. 665.—(No one is bound to arm his adversary against himself.)

Nemo tenetur divinare. 3 Co. 38.—(No one is bound to foretell.)

Nemo tenetur jurare in suam turpitudinem. Halk. 100.—(No one is bound to testify to his own baseness.)

Nemo tenetur prodere seipsum.—(No one is bound to betray himself. In other words, No one can be compelled to criminate himself.) See *Broom's Legal Max.*, 6th ed., 922.

The Act 14 & 15 Vict. c. 99, which by s. 5 makes parties admissible witnesses in actions,

expressly saves criminal proceedings from its operation. The Licensing Act, 1872, s. 51, the Conspiracy, etc., Act, 1875, s. 11, the Adulteration Act, 1875, s. 21, the Criminal Law Amendment Act, 1885, s. 20, the Law of Libel Amendment Act, 1888, s. 9, and the Public Health (London) Act, 1891, s. 118, make defendants competent, but not compellable to give evidence, and a Government Criminal Law Evidence Bill, to make the principle of these statutes general, has of recent years been frequently submitted to Parliament.

Nemo tenetur seipsum accusare. Wing. 486.—(No one is bound to accuse himself.) See *Nemo tenetur, etc., supra.*

Nemo unquam judicet in se.—(Let no one ever be a judge in his own cause.) See *Nemo debet esse judex, etc., supra.*

Nephew [fr. *nepos*, Lat.], the son of a brother or sister.

A nephew, according to the civil law, is in the third degree of consanguinity; but according to the canon law, in the second.

Nepos, a grandson.

Neptis, a granddaughter.

Ne recipiatur, a caveat entered by a defendant to prevent a plaintiff from trying his cause at certain sittings, where the cause was not entered in due time.—*R.* 43, H. T. 1853.

Ne relessa pas (*he did not release*).

Net profits, clear profits after all deductions.

Nether House of Parliament. The House of Commons was so called in the time of Henry VIII.—*Div. of Purl.* 221.

Ne unques accouple in loyal matrimonie, a plea whereby a tenant in the real action of dower *unde nihil*, controverted the validity of the defendant's marriage with the person out of whose estate she claimed dower. To this plea, the defendant replied that she was accoupled in lawful matrimony at A. in such a diocese, upon which a writ issued to the bishop of such diocese, requiring him to certify the fact to the court.—*Co. Ent.* 180.

Ne unques executor or **administrator**, a plea whereby a defendant denied that he was executor or administrator. It did not deny the cause of action, but only that the defendant was the personal representative of the testator or intestate.—1 *Saund.* 207 *a.*

Ne unques seisie que dower, a plea in dower which was often called the general issue, but it did not seem to fall strictly within the definition of that term. It did not, properly speaking, contain any denial or traverse of the count, and must therefore be considered as an anomaly or exception in the system of pleading. See C. L. P. Act, 1860, ss. 25, 27.

Never indebted, *plea of*, a species of traverse which occurred in actions of debt on simple contract, and was resorted to when the defendant meant to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.—*Steph. Plead.*, 7th ed., 153, 156. By R. S. C. 1883, Ord. XIX., r. 17, a defendant may not deny generally the facts alleged by the plaintiff. See further, PLEADING.

New assignment, a form of pleading which sometimes arose from the generality of the declaration, when, the complaint not having been set out with sufficient precision, it became necessary, from the evasiveness of the plea, to re-assign the cause of action with fresh particulars. It most frequently occurred in actions of trespass, as where two assaults had been committed, one of which was justifiable and the other indefensible; or in trespass *quare clausum fregit*, when the defendant claimed a right of way.

New assignment is now abolished, and it is provided that everything formerly alleged by way of new assignment is to be introduced by way of amendment of the statement of claim.—R. S. C. 1883, Ord. XXIII., r. 6.

New Brunswick. See 20 & 21 Vict. c. 34.

New Forest, a royal forest in Hampshire, founded by William the Conqueror. See 41 Geo. III. c. 108; 48 Geo. III. c. 72; 50 Geo. III. c. 116; 51 Geo. III. c. 94 (as to timber); 59 Geo. III. c. 86 (as to common of pasture); 14 & 15 Vict. c. 76 (as to deer); 59 Geo. III. c. 86, and 10 Geo. IV. c. 50 (as to leases); 17 & 18 Vict. c. 49 (as to settlement of claims); and 29 & 30 Vict. c. 63 (as to game).

Newfoundland. See 5 Geo. IV. c. 67; 5 & 6 Vict. c. 120; 9 & 10 Vict. cc. 3, 45; 10 & 11 Vict. cc. 1, 44; and 12 & 13 Vict. c. 21.—1 *Steph. Com.* 7th ed., 105.

New Inn, an Inn of Chancery. See INNS OF CHANCERY.

New Natura Brevium. See FITZHERBERT.

New Parishes Acts. 6 & 7 Vict. c. 37 (called 'Peel's Act'); 7 & 8 Vict. c. 94; 19 & 20 Vict. c. 104; and 32 & 33 Vict. c. 94, passed in 1843, 1844, 1856, and 1869, for better providing for the spiritual care of populous parishes by the establishment of district churches therein. See *Trower's New Parishes Acts.*

New South Wales, and **Van Diemen's Land** or **Tasmania.** See 9 Geo. IV. c. 83; 6 & 7 Wm. IV. c. 46; 7 Wm. IV. & 1 Vict. c. 42; 1 & 2 Vict. c. 50; 2 & 3 Vict. c. 70; 3 & 4 Vict. c. 62; 4 & 5 Vict. c. 44; 5 & 6 Vict. c. 76; 7 & 8 Vict. c. 74; 12 & 13 Vict.

cc. 22, 52; 18 & 19 Vict. cc. 54, 55, s. 3, c. 56; 24 & 25 Vict. c. 44, ss. 1, 4; and 29 & 30 Vict. c. 74.

New style. The modern system of computing time was introduced into Great Britain A.D. 1752, the 3rd of September of that year being reckoned as the 14th. See NEW YEAR'S DAY.

New trial. If any defect of judgment happen from causes wholly intrinsic, i.e., arising from matters foreign to or *dehors* the record, the only remedy the party injured by it has (except formerly error *corum nobis* or *vobis* in some few cases), is by applying to the Court for a new trial, which is in substitution for a bill of exceptions. But the Court must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case, before they will grant a new trial.

The following is a summary of the cases in which a new trial may be granted. They are all subject to the rule that in an action of contract, unless some right independent of the damages be in question, the amount in dispute must be 20*l.* at least, for the Court to interfere.

(1) Mistake, etc., of the judge. If a judge misdirect a jury, even in a penal action, it is generally a good ground for a new trial. So if a judge improperly nonsuit a plaintiff. So if a judge admit improper evidence, or reject evidence which ought to be admitted, by which means the result of the trial or inquiry has been different from what it otherwise would have been. It is expressly provided by the Rules of the Supreme Court, however, that a new trial 'shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action' (R. S. C. 1883, Ord. XXXIX., r. 6).

(2) Default or misconduct of the officer of the Court. As where a cause is, by mistake, entered in a wrong list, and the cause is tried as undefended in the defendant's absence.

(3) Default or misconduct of the jury. If a juror has been sworn by a wrong *surname*, and it has been productive of some injustice. If a jury find a verdict 'against the weight of evidence,' but in this case, more than in any other, the Court will be very reluctant to grant the new trial. For excessive damages, and for the smallness of the damages, if out of all proportion to the injury. For the misconduct of the jury, as if they had eaten or drunk at the expense of the party for whom they had afterwards found a verdict, or if they determine their verdict by lots, or if any of them had declared that the plaintiff should never have a verdict.

(4) Absence, etc., of counsel or solicitor. The instances are very rare in which the Court has granted a new trial on this ground.

(5) Default or misconduct of the opposite party. If a party for whom a verdict is afterwards given, deliver to the jury, after they have left the bar, evidence which had not been adduced in court, a new trial will be granted. So if he have laboured the jury, or used improper influence with them. So misleading or taking by surprise the opposite party. So where no notice of trial has been given: but if the defendant appear to defend, this irregularity is waived.

(6) Default or misconduct of witnesses. The general rule is, that a new trial will not be granted on the ground that evidence has not been given that might have been given at the trial, for the plaintiff ought, if unprepared with his evidence, either to make application to postpone the trial before the jury are sworn, or should withdraw his record and not take the chance of a verdict. The Court has granted a new trial where it appeared clearly that the plaintiff's case was a mere fiction supported by perjury, which the defendant could not at the time of the trial be prepared to answer.

(7) Discovery of new evidence after the trial. A new trial will seldom be granted where a verdict has been given against a party, or a plaintiff has been nonsuited for want of evidence which might have been produced at the trial, because it would tend to introduce perjury. But if new evidence have been discovered after the trial, the Court will grant a new trial (which has usually been upon payment of costs) if it be necessary, in order to do justice between the parties; but the discovery of witnesses who can contradict those produced on the former trial, seems to be no ground for a new trial, nor will the Court grant a new trial to let a party into a defence of which he was apprised at the first trial.

(8) Where one of several issues, etc., has been wrongfully decided. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question (R. S. C. 1883, Ord. XXXIX., r. 7).

(9) Where there has been a previous new trial. If the jury on the second trial find

for the party against whom the former verdict was given, the Court, if the case be doubtful, or the second verdict do not accord with the justice of the Court, may be induced to grant a third trial, but this is entirely in the discretion of the Court, even after two concurring verdicts.

(10) Where a party has been taken by surprise.

A new trial may be awarded for the same causes, after inquiry before the sheriff, as after a verdict.

As to time and manner of moving for a new trial, see Ord. XXXIX.

The motion must be made to the Court of Appeal. See Ord. XXXIX., r. 1 (trial without jury), Judicature Act, 1890, s. 1 (trial with jury).

Newgate, Delivery of. See CENTRAL CRIMINAL COURT.

News. Spreading false news to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanour punishable at Common Law with fine and imprisonment; which is confirmed by Stat. West. I., 3 Edw. I. c. 34; 2 Rich. II. st. 1. c. 5; and 12 Rich. II. c. 11. See 4 *Bl. Com.* 149.

Newspapers, periodical publications containing intelligence of passing events. They have from time to time been the subject of enactments for their general regulation. The principal of these were the 60 Geo. III. and 1 Geo. IV. c. 9; and 6 & 7 Wm. IV. c. 76. But these and other Acts were repealed by the 32 & 33 Vict. c. 24, with the exception of certain sections re-enacted by that Act. The 33 & 34 Vict. c. 12, s. 82, abolished stamp duties on newspapers from 1st October, 1870. Under 6 & 7 Vict. c. 96, s. 2, the defendant in any action for a libel contained in a public newspaper, may plead an apology and payment into court. The Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, as amended by the Law of Libel Amendment Act, 1888, 51 & 52 Vict. c. 64, requires the consent of a judge at chambers to the prosecution of a newspaper for libel, allows the defence of justification to be gone into by justices, allows justices to summarily convict, and gives 'privilege' (see LIBEL) to newspaper reports of proceedings in a court or at public meetings. The Act of 1881 also establishes a register of newspaper proprietors, open to public search.

New Year's Day, the 1st of January, and the day on which is commemorated the circumcision of the Saviour as being the eighth from the 25th of December, His supposed day of nativity. The 25th of March was the civil and legal New Year's Day till the alteration of the style in 1752, when it was permanently fixed as the 1st January.

In Scotland the year was, by a proclamation which bears date 27th November, 1599, ordered thenceforth to commence in that kingdom on the 1st January instead of the 25th March.—*Encyc. Lond.* By the 34 Vict. c. 17, New Year's Day is made a bank holiday in Scotland, and bills, etc., becoming due on that day are payable on the following day. See HOLIDAY.

New Zealand, Bishopric of, constituted by 15 & 16 Vict. c. 88.

New Zealand Islands. See 3 & 4 Vict. c. 62; 9 & 10 Vict. c. 103; 10 & 11 Vict. c. 112; 11 & 12 Vict. c. 5; 12 & 13 Vict. c. 79; 13 & 14 Vict. c. 70; 14 & 15 Vict. cc. 84, 86; 15 & 16 Vict. c. 72; 20 & 21 Vict. cc. 51—53; 24 & 25 Vict. cc. 30, 52; 25 & 26 Vict. c. 48. By 26 Vict. c. 23, the boundaries of New Zealand are altered. See also 27 & 28 Vict. c. 82; 29 & 30 Vict. c. 104; 31 & 32 Vict. cc. 57, 92, 93; and the 'Australian Colonies Duties Act, 1873' (36 Vict. c. 22). And as to roads, see 33 & 34 Vict. c. 40, and 36 & 37 Vict. c. 15.

Nexi, among the Romans, persons freeborn, who, for debt, were delivered bound to their creditors, and obliged to serve them until they could pay their debts.

Next friend. At law, an infant having a guardian might sue by his guardian, as such, or by his next friend, though he must always have defended by his guardian. In equity he sued by next friend, and not by guardian, and defended by guardian *ad litem.* A married woman, before the Married Women's Property Act, could not sue either at law or in equity unless her husband were joined.

Infants may sue as plaintiffs by their next friends in the manner practised before the Jud. Acts in the Court of Chancery (as to which see *Dan. Ch. Pr.*, 5th ed., p. 602), and may in like manner defend any action by their guardian appointed for that purpose by Ord. XVI., r. 6. The next friend of an infant is *primâ facie* liable to the costs, which are, however, reimbursed to him out of the infant's estate, provided he have acted properly; but the next friend of a *feme covert* does not incur the like responsibility.

A married woman had, by Ord. XVI., r. 8, of the Rules of 1875, the same right of suing by a next friend as an infant, but the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, s. 1, subs. 2, by allowing a married woman to sue in all respects as if she were a *feme sole*, has rendered the 'next friend' in her case unnecessary. See R. S. C. 1883, Ord. XVI., r. 16.

Lunatics and persons of unsound mind sue by their committee or next friend, and defend by their committees or guardians appointed for that purpose (R. S. C. 1883, Ord. XVI., r. 17).

Next of kin. A person, or set of persons, standing nearest in blood relationship to another person.

Nexum, the transfer of ownership of a thing, or the mortgage of it.—*Civ. Law.*

Nicole, an ancient name for Lincoln.—*Cowel.*

Niece [fr. *neptis*, Lat.], the daughter of a brother or sister. See NEPHEW, as to the degree of consanguinity.

Nief. See NEIFE.

Nient comprise (*not contained*), an exception taken to a petition, because the thing desired is not contained in the deed or proceeding upon which the petition is founded.

Nient culpable (*not guilty*), a plea in criminal prosecutions.

Nient dedire (*to disown nothing*), to suffer judgment by not denying or opposing it, i.e., by default.

Nient le fait (*not his deed*).

Niger liber, the black book or register in the Exchequer; chartularies of abbeys, cathedrals, etc.

Night, the time of darkness between sunset and sunrise. Under the Act against poaching by night, 9 Geo. IV. c. 69, s. 12, the night begins one hour after sunset, and ends one hour before sunrise. Under the Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 1 (see BURGLARY), night is between 9 P.M. and 6 A.M. An arrest might be made on a *capias* on mesne process in the night; and also on a *ca. sa.*; and a writ of summons may be served during the night.

Night-House, the name sometimes given to a refreshment-house before the Licensing Act, 1872. See PUBLIC-HOUSE CLOSING ACT.

Night Magistrate, a constable of the night; the head of a watch-house.—*Scott.*

Night-walkers, vagrants, pilferers, disturbers of the peace. They may be arrested by the police, and committed to custody till the morning.—2 *Hale P. C.* 90.

Nihil [Lat.] (*nothing*), a return made by a sheriff, etc., when the circumstances warrant it. See NULLA BONA.

Nihil aliud potest rex quàm quod de jure potest. 11 Rep. 74.—(The king can do nothing except what he can by law do.)

Nihil capiat per breve (*that he take nothing by his writ*). Where an issue, arising upon a declaration or temporary plea, is decided for the defendant, the judgment is, generally, that the plaintiff take nothing, etc., and that the defendant go thereof without day, etc., which is a judgment of *nihil capiat*, etc.

Nihil consensui tam contrarium est quàm vis atque metus. D. 50, 17, 116.—(Nothing is so opposed to consent as force and fear.)

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Co. Litt. 188.—(Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.)

Nihil facit error nominis cum de corpore constat. 11 Co. 21.—(An error as to a name is nothing when there is certainty as to the person.)

Nihil habet forum ex scenâ. Bacon.—(The court has nothing to do with what is not before it.)

Nihil in lege intolerabilius est eandem rem diverso jure censeri. 4 Rep. 93 *a.*—(Nothing is more intolerable in law than that the same thing should be judged by a different rule.)

Nihil magis justum est quam quod necessarium est. Dav. 12.—(Nothing is more just than what is necessary.)

Nihil perfectum est dum aliquid restat agendum. 9 Rep. 9 *b.*—(Nothing is perfect while something remains to be done.)

Nihil præscribitur nisi quod possidetur. Lord Hale, 'De jure maris,' 32.—(Nothing is prescribed except what is possessed.)

Nihil quod est contra rationem est licitum. Co. Litt. 97.—(Nothing is permitted which is contrary to reason.)

Nihil quod est inconveniens est licitum. Co. Litt. 66 *a.*—(Nothing that is inconvenient is allowed.) In other words, the law will sooner suffer a private mischief than a public inconvenience. See *Broom's Leg. Max.*, 6th ed., 178, 346.

Nihil simul inventum est et perfectum. Co. Litt. 230.—(Nothing is invented and perfected at the same moment.)

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. 2 Inst. 359.—(Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound.) See *Broom's Leg. Max.*, 6th ed., 832.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere. 1 Co. 100.—(Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.)

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur, nudi consensûs obligatio contrario consensu dissolvitur. D. 56, 17, 35.—(Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore the obligation of words is

taken away by words, the obligation of mere consent is dissolved by the contrary consent.) Consult *Broome's Leg. Max.*, 6th ed., 836.

Nihil tam proprium est imperii quam legibus vivere. 2 Inst. 63.—(Nothing is so much the property of sovereignty as to live according to the laws.)

Nihils, or **Nichils,** debts to the Crown which a sheriff, when making up his accounts for the Exchequer, said were nothing worth and illeviable, for the insufficiency of the parties from whom due. Sheriff's accounts are now audited by such persons, etc., as the Treasury direct.—*Sheriff's Act*, 1887, s. 22.

Nil consensui tam contrarium est quàm vis atque metus. D. 50, 17, 116.—(Nothing is so opposed to consent as force and fear.)

Nil debet (*he owes nothing*), the old form of the general issue in all actions of debt not founded on a specialty. This plea was not allowed after *Reg. Gen. T. T.* 1853, r. 11. See PLEADING.

Nil dicit, Judgment by. See JUDGMENT BY DEFAULT.

Nil facit error nominis cum de corpore vel personâ constat. 11 Rep. 21.—(A mistake in the name does not matter when the body or person is manifest.) See 11 *C. B.* 406.

Nihil or **nil habuit in tenementis** (*he* [the landlord] *had no interest in the tenements* [demised]), a plea denying the lessor's title pleaded in an action of debt only, brought by a lessor against lessee for years, or at will, without deed or occupation by the lessee, for if the lessee had become tenant, he would have been estopped from denying his landlord's title.

Nimia subtilitas in jure reprobatur. Wing. 26.—(Too much subtlety in law is blamed.)

Nimium altercando veritas amittitur. Hob. 344.—(By too much altercation truth is lost.)

Nimmer, a thief; a pilferer.

Nisan. See ABIB.

Nisi prius, a Common Law phrase, which originated thus:—

An action was formerly triable only in the court where it was brought. But it was provided by Magna Charta, in case of the subject, that assizes of novel disseisin and mort-ancestor (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to take these assizes there.—1 *Reeves*, 246. These local trials being convenient, were applied to other actions: for by the statute of *Nisi Prius*, 13 Edw. I. st. 1, c. 30, as the general course of proceeding, writs of *venire* for summoning juries to the superior courts are in the following terms:—*Præcipimus tibi quod venire facias coram justiciariis nostris apud Westm. in Octavis Sancti Michaelis Nisi talis et talis, tali die et loco, ad partes illas venerint duodecim, etc.* Thus the trial was to be had at Westminster only in the event of *its not previously taking place* in the county before the justices appointed to take the assizes. This clause of *nisi* or *nisi prius* is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by a subsequent statute of 14 Edw. III. c. 16, which authorises a trial before the justices of assize, in lieu of the superior court, and gives it the *name* of a trial at *Nisi Prius*. —2 *Inst.* 424.

Nisi prius record. This was an instrument in the nature of a commission to the judges at *Nisi Prius* for the trial of a cause, written on parchment and delivered to the officer of the court in which the cause was to be tried. Any variance between the record and the issue should have been objected to at the time of trial, but the judges had power to amend variances.—9 *Geo. IV.* c. 15; 3 & 4 *Wm. IV.* c. 42, s. 23; *C. L. P. Act*, 1852, s. 222; and 1 *Chit. Arch. Prac.*, 12th ed., 361. See now RECORD OF NISI PRIUS, and TRIAL.

Nitro-Glycerine. See the Explosives Act, 38 Vict. c. 17, which repeals 32 & 33 Vict. c. 113.

Nizam, an arranger; the superior officer of a province charged with the administration of criminal law.—*Indian.*

Nizamut, arrangement, government, the office of the Nazam or Nizam.—*Ibid.*

Nizamut adawlut, the Chief Criminal Court of the British provinces in India.—*Ibid.*

Nobile officium, the equitable jurisdiction of the Court of Session in Scotland.

N. L. See A. and NON LIQUET.

Nobiles magis plectuntur pecuniâ; plebes vero in corpore. 3 Inst. 220.—(The higher classes are more punished in money; but the lower in person.)

Nobiles sunt, qui arma gentilitia antecessorum suorum proferre possunt. 2 Inst. 595.—(The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors.)

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ. Reg. Jur. Civ.—(In cases of doubt, the more generous and more benign presumptions are to be preferred.)

Nobilitas est duplex, superior et inferior. 2 Inst. 583.—(There are two sorts of nobility, the higher and the lower.)

Nobility, a division of the people, comprehending dukes, marquesses, earls, viscounts, and barons. These had anciently duties an-

nexed to their respective honours; they are created either by writ, i.e., by royal summons to attend the house of peers, or by letters-patent, i.e., by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity.—1 *Bl. Com.* 396.

Noble. See GEORGE-NOBLE.

Nocent, guilty; criminal.

Noctanter (*by night*), an abolished writ which issued out of Chancery, and returned to the Queen's Bench, for the prostration of enclosures, etc.—7 & 8 *Geo. IV.* c. 27.

Noctes and **Noctem de firmâ,** entertainment of meat and drink for so many nights. —*Domesday.*

Nodfyrs, or **Nedfri** [fr. *neb*, Sax., necessary], necessary fire. See *Spelman.*

Noka, a half ingate, generally 7½ acres.

Nolens volens, whether willing or unwilling.

Nolle prosequi (*to be unwilling to prosecute*), a proceeding in the nature of an undertaking by the plaintiff when he has misconceived the nature of the action, or the party to be sued, to forbear to proceed in a suit altogether, or as to some part of it, or as to some of the defendants. It differs from a *non pros.*, which puts a plaintiff out of court with respect to all the defendants. See DISCONTINUANCE.

Nomen collectivum, a singular noun of multitude.

Nomen est quasi rei notamen. 11 Co.—(A name is, as it were, the note of a thing.)

Nomen generalissimum, a most universal term, as land.

Nomina si nescis perit cognitio rerum. Et nomina si perdas certè distinctio rerum perditur. Co. Litt. 86.—(If you know not the names of things, the knowledge of things themselves perishes. And if you lose the names, the distinction of the things is certainly lost.)

Nomina sunt mutabilia, res autem immobiles. 6 Co. 66.—(Names are mutables, but things immutable.)

Nomina sunt notæ rerum. 11 Co. 20.—(Names are the notes of things.)

Nomina sunt symbola rerum. Godb.—(Names are the symbols of things.)

Nomina Villarum, an account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs, 9 Edw. II., and returned by them into the Exchequer, where it is still preserved.

Nominal damages. See DAMAGES.

Nominal partner, one who has not any actual interest in the trade or business, or its profits; but by allowing his name to be used holds himself out to the world as apparently having an interest.

Nominate contracts, those distinguished by particular names.—*Civil Law.*

Nominatim, by name; expressed one by one.

Nomination, the act of mentioning by name; especially the power of appointing by virtue, of some manor or otherwise, a clerk to a patron of a benefice, by him to be presented to the ordinary. A nominator must appoint his clerk within six months after avoidance; if he do not, and the patron presents his clerk before the bishop has taken any benefit of the lapse, he is obliged to admit such clerk.—*Plowd.* 529. Also (see Ballot Act, 1872, and Municipal Corporations Act, 1882, s. 55), the written proposal of a candidate at a parliamentary or municipal election.

Nominativus pendens, a nominative case grammatically unconnected with the rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes* [This indenture, etc., down to whereas], though an intelligible and convenient part of the deed, are of this kind.

Nomine pœnæ, a penalty incurred for not paying rent, etc., at the day appointed in the lease or agreement for payment thereof.

Strictly no forfeiture is *nomine pœnæ*, unless for non-payment of rent; but it is usual to mention stipulated penalties for non-payment of a collateral sum, ploughing up ancient meadow, or above a certain number of acres in one year, for changing the character of particular premises, etc., by the general name of *nomine pœnæ.*

Where a penalty is annexed to the non-payment of rent, and distress given for it, a demand must be made, and the penalty is waived by acceptance of rent.—*Cowp.* 247.

Nomocanon [fr. νόμος, Gk., law; and κανών, a rule], a collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. 2. A collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier.—*Encyc. Lond.*

Nomographer [fr. νόμος, Gk., law; and γράφω, to write], one who writes on the subject of laws.

Nomography, a treatise or description of laws.

Nomotheta [Gk.], a law-giver, or law commissioner.

Nomothetical, legislative.

Non-ability, inability; an exception against a person.—*F. N. B.* 35, 65. See DISABILITY.

Non accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram. Bacon.—(Words which agree in a true meaning ought not to be received in a false sense.)

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio. 3 Inst. 217. —(A person may not be punished differently than according to what the sentence enjoins.)

Nonæ et decimæ, payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry, the second was claimed in right of the church.

Non-acceptance, the refusal of acceptance.

Non acceptavit [Lat.] (*he did not accept*). This was a plea which put in issue the fact of a bill of exchange being due at the time of action brought, being a denial of a defendant having accepted such a bill as was described in the declaration.—*Hinton* v. *Duff*, 10 *W. R.* 295.

Non-access, when a husband could not, in the course of nature, by reason of his absence, have been the father of his wife's child, the child is a bastard.

Access is presumed during wedlock; but this presumption may be encountered by proof of circumstances showing that sexual intercourse did not take place within such a time that the husband could be the father. The mother of the child whose legitimacy is questioned will not be allowed to prove the non-access of her husband, not even after her husband's death. See ACCESS.

Non-act, a forbearance from action; the contrary to act.

Non-admission, the refusal of admission.

Non-age, minority. See INFANT.

Nonagium, or **Non-age,** a ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretence of being distributed to pious uses.—*Blount.*

Non aliter à significatione verborum recedi operet quam cum manifestum est aliud sensisse testatorem. 2 De Gex. M. & G. 313.—(It behoves us not to depart from the literal meaning of words, unless it is evident that the testator intended some other meaning.) See *Broom's Leg. Max.*, 6th ed., 525.

Non-appearance, the omission of timely and proper appearance; a failure of appearance. See APPEARANCE.

Non assumpsit (*he did not promise*), a plea by way of traverse, which occurred in the action of *assumpsit* or promises. This plea operated as a denial in point of fact of the existence of any express promise to the effect alleged in the declaration, or of the matters of fact from which the promise alleged would be implied by law; see *Steph. Plead.*, 7th ed., 154, 160. See, too, as to the effect of the plea, *Bullen and Leake on Pleading.*

Non assumpsit infra sex annos (*he did not promise within six years*). This was the form of pleading the Statute of Limitations. See LIMITATION OF SUITS, and PLEADING.

Non bis in idem (*not twice tried for the same offence*).

Non cepit (*he took not*). This was a plea by way of traverse, which occurred in the action of replevin. It applied to the case where the defendant had not, in fact, taken the cattle or goods, or where he did not take them or have them in the place mentioned in the declaration; the place being a material point in this action.

Non-claim, the omission or neglect of him that ought to challenge his right within a time limited, as within a year and day; but now no continual or other claim shall preserve any right of making an entry or distress or of bringing an action.—3 & 4 *Wm. IV.* c. 27, s. 11; *Bl. Com.* i. 465, and ii. 364.

Non compos mentis, said of a person who is not of sound memory and understanding. See IDIOTS and LUNATICS.

Non concedantur citationes priusquam exprimatur super quâ re fieri debet citatio. 12 Co. 47.—(Summonses should not be granted before it is expressed on what matter the summons ought to be made.)

Non concessit (*he did not grant*), a plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers. This plea brought into issue the title of the grantor as well as the operation of the deed. See now PLEADING.

Nonconformist, one who refuses to comply with others; one who refuses to join in the established forms of worship.

Nonconformists are of two sorts: (1) such as absent themselves from divine worship in the Established Church through total irreligion, and attend the service of no other persuasion; (2) such as attend the religious service of another persuasion. See DISSENTER and AFFIRMATION.

Any person wilfully or contemptuously disturbing any congregation assembled in any church or permitted meeting-house, or misusing any preacher or teacher there, may be bound over to keep the peace, and incurs a penalty of 20*l.*—1 *Wm. & M.* st. 1, c. 18.

Non constat (*it is not certain*), a phrase used by one who insists on logical possibility.

Non culpabilis, sometimes abbreviated *Non. cul.* (*not guilty*).

Non damnificatus (*not injured*). This was a plea in an action of debt on an indemnity bond, or bond conditioned 'to keep the plain-

tiff harmless and indemnified,' etc. It was in the nature of a plea of performance; being used where the defendant meant to allege that the plaintiff had been kept harmless and indemnified, according to the tenor of the condition.—*Steph. Plead.*, 7th ed., 300—1. See now PLEADING.

Non dat qui non habet. Lofft. 258.—(He who has not does not give.) See *Broom's Leg. Max.*, 6th ed., 436.

Non debeo melioris conditionis esse, quàm auctor meus à quo jus in me transit. D. 50, 17, 175, s. 1.—(I ought not to be in a better condition than my author from whom the right passes to me.)

Non debet adduci exceptio ejus rei cujus petitur dissolutio. Jenk. Cent. 37.—(An exception of the thing whose abolition is sought ought not to be adduced.)

Non debet alteri per alterum iniqua conditio inferri. D. 50, 17, 74.—(An unjust condition ought not to be imposed upon one by another.)

Non debet cui plus licet, quod minus est non licere, D. 50, 17, 21.—(A man having a power may do less than such power enables him to do.) Consult *Broom's Leg. Max.*, 6th ed., 169.

Non debet dici tendere in prejudicium ecclesiasticæ libertatis quod pro rege et republicâ necessarium videtur. 2 Inst. 625.—(That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.)

Non decimando, a custom or prescription to be discharged of all tithes, etc.

Non decipitur qui scit se decipi. 5 Co. 60. —(He is not deceived who knows himself to be deceived.)

Non definitur in jure quid sit conatus. 6 Co. 41.—(What an attempt is, is not defined in law.) But see now *Russell on Crimes*, 5th ed., vol. i., 188 *et seq.*

Non detinet, a plea by way of traverse, which occurred in the action of detinue. This plea alleged that the defendant did not detain 'the said goods in the said declaration specified,' etc. It operated accordingly as a denial of the detention of the goods. But, under this plea, the defendant could not deny that they were the plaintiff's.—*Steph. Plead.*, 7th ed., 154, 163.

Non dimisit (*he demised not*), a plea resorted to where a plaintiff declared upon a demise without stating the indenture in an action of debt for rent. 2. A plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise.

Non direction, omission on the part of a judge to enforce a necessary point of law upon a jury. See NEW TRIAL; and see Jud. Act, 1875, s. 22, which preserves the right of any party to have the issues for trial by jury left to the jury, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues.

Non distringendo, a writ not to distrain.—Obsolete.

Non effecit affectus, nisi sequatur effectus. Sed in atrocioribus delictis punitur affectus, licet non sequatur effectus. 2 Rol. Rep. 89.—(The intention fulfils nothing unless an effect follow. But in the deeper delinquencies, the intention is punished, although an effect follow not.)

Nones, days in the Roman calendar, so called because they reckoned nine days from them to the Ides.

The seventh day of March, May, July, and October, and the fifth day of all other months. —*Kenn. Antiq.* 92.

Non est arctius vinculum inter homines quam jusjurandum. Jenk. Cent. 126.—(There is no tighter bond among mankind than an oath.)

Non est consonum rationi, quod cognitio accessorii in curiâ christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere. 12 Co. 65.—(It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.)

Non est disputandum contra principia negantem. Co. Litt. 343.—(We cannot dispute against a man who denies first principles.)

Non est factum. This was a plea by way of traverse, which occurred in debt on bond or other specialty, and also in covenant. It denied that the deed mentioned in the declaration was the defendant's deed; under this, the defendant might contend at the trial that the deed was never executed in point of fact; but he could not deny its validity in point of law. And see ASSUMPSIT and PLEADING.

Non est inventus, a sheriff's return to a writ when the defendant is not to be found in his bailiwick.

Non est novum ut priores leges ad posteriores trahantur. D. 1, 3, 36.—(It is no new thing that prior statutes should give place to later ones.)

Non est regula quin fallat. Office of Executor, 212.—(There is no rule which may not fail.)

Non ex opinionibus singulorum sed ex communi usu nomina exaudiri debent. Dig. 33, 10, 7, s. 3.—(Names ought to be regarded not by the opinions of individuals, but by the common use.)

Non facias malum, ut inde veniat bonum. 11 Co. 74.—(You are not to do evil that thence good may arise.)

Non-feasance, an offence of omission.

Non hæc in fœdera veni.—(I did not agree to these terms.)

Non impedit clausula derogatoria quo minus ab eâdem potestate res dissolvantur a quâ constituuntur. Bacon.—(A derogatory clause does not impede things from being dissolved by the same power by which they are created. See *Broom's Leg. Max.*, 6th ed., 21.

Non in legendo sed in intelligendo leges consistunt. 8 Co. 167.—(The laws consist not in being read, but in being understood.)

Non jus sed seisina facet stipitem. Fleta, l. 6.—(Not right, but seisin, makes a stock.) But see INHERITANCE.

Non licet quod dispendio licet. Co. Litt. 127.—(That which is permitted at a loss is not permitted.)

Non implacitando aliquem de libero tenemento sine brevi, a writ to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the king's writ. —*Reg. Orig.* 171. Obsolete.

Non infregit conventionem, a plea which raised a substantial issue in an action for non-repair according to covenant, whether there was a want of repairs or not. See PLEADING.

Non intromittant clause, a clause of a charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace for the county. See. *R.* v. *Sainsbury*, 4 *T. R.* 451.

Non intromittendo, quando breve præcipe in capite subdole impetratur, a writ addressed to the justices of the bench, or in eyre, commanding them not to give one, who under colour of entitling the king to land, etc., as holding of him *in capite*, had deceitfully obtained the writ called *præcipe in capite*, any benefit thereof, but to put him to his writ of right.—*Reg. Orig.* 4. Obsolete.

Non-issuable pleas, those upon which a decision would not determine the action upon the merits, as a plea in abatement. See PLEADING.

Non-joinder of Parties. See PARTIES and ABATEMENT.

Nonjuror, one who (conceiving the Stuart family unjustly deposed) refused to swear allegiance to those who succeeded them.

Non liquet (*it does not appear clear*), a verdict given by a jury when a matter was to be deferred to another day of trial.

The same phrase was used by the Romans; after hearing a cause, such of the judges as thought it not sufficiently clear to pronounce upon, cast a ballot into the urn with the two betters N.L. for *non liquet.*

Non merchandizanda victualia, an ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did.—*Reg. Orig.* 184. Obsolete.

Non molestando, a writ that lay for a person who was molested contrary to the king's protection granted to him.—*Reg. Orig.* 184.

Non observata formâ infertur annullatio actûs.—(When form is not observed, a failure of the action ensues.)

Non obstante (*notwithstanding*), a license from the Crown to do that which could not be lawfully done without it. Also, a clause frequent in statutes and letters-patent, importing a license from the Crown to do a thing, which by Common Law might be done, but being restrained by Act of Parliament could not be done without such license.—*Plowd.* 501; 2 *Reeves*, c. viii. p. 83.

But the doctrine of *non-obstante*, which sets the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution; for it is enacted by 1 W. & M. st. 2, c. 2, that no dispensation, by *non-obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of none effect, except a dispensation be allowed in such statute.

Non obstante veredicto, Judgment. Judgment, 'notwithstanding the verdict,' for a plaintiff in a case where a jury has found for the defendent in a manner substantially contrary to law. See JUDGMENT.

Non omittas, the clause 'that you omit not by reason of any liberty in your bailiwick,' which is usually inserted in all processes addressed to sheriffs, which makes the liberty *pro hâc vice*, parcel of the sheriff's bailiwick, and the sheriff must enter and execute the writ within the liberty.

If a writ do not contain a *non omittas* clause, the sheriff directs his mandate either to the lord or the bailiff of the liberty, by whom the writ is executed and returned.

Non omnium quæ à majoribus nostris constituta sunt ratio reddi potest. Dig. 1, 3, 20. —(A reason cannot be given for all the laws which have been established by our ancestors.) Consult *Broom's Leg. Max.*, 6th ed., 150.

Non pertinet ad judicem secularem cognoscere de iis quæ sunt merè spiritualia annexa. 2 Inst. 488.—(It belongs not to the secular judge to take cognizance of things which are merely spiritual.)

Non plevin, default in not replevying land in due time. See 9 *Edw. III.* c. 2.

Non ponendis in assisis et juratis, a writ formerly granted for freeing and discharging persons from serving on assizes and juries.—*F. N. B.* 165.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. Broom's Leg. Max., 6th ed., 668.—(A person in possession is not bound to prove that the possessions belong to him.)

Non potest adduci exceptio ejus rei cujus petitur dissolutio. Bac. Max. 22.—(An exception of the same thing whose avoidance is sought, cannot be made.)

Where the legality of some proceeding is the subject in dispute between two parties, he who maintains its legality, and seeks to take advantage of it, cannot rely upon the proceeding itself as a bar to the adverse party; for otherwise the person aggrieved would be clearly without redress.

Non potest probari quod probatum non relevat. 1 Exch. 91, 92.—(That cannot be proved, which, if proved, is immaterial.)

Non potest rex gratiam facere cum injuriâ et damno aliorum. 3 Inst. 236.—(The king cannot confer a favour on one subject which occasions injury and loss to others.) *Broom's Leg. Max.*, 6th ed., 59.

Non potest videri desisse habere qui nunquam habuit. Dig. 50, 17, 208.—(One who never did possess cannot be considered to have ceased to possess.)

Non procedendo ad assisam rege inconsulto, a writ to stop the trial of a cause appertaining to one who is in the royal service, etc., until the sovereign's pleasure be further known.—*Reg. Orig.* 220.

Non pros., abbrev. for *non prosequitur* (*he* [the plaintiff] *does not pursue* [his action]). Where the plaintiff fails to take the proper step in his action in the proper time, the defendant enters what is called a non prosequitur, and signs final judgment against the plaintiff, who is said to be *non prosd.*

Under R. S. C. 1883, Ord. XXVII., the substituted process seems to be for the defendant to apply for a dismissal of the action for want of prosecution.

Non quod dictum est, sed quod factum est, inspicitur. Co. Litt. 36 *a.*—(Regard is to be had, not to what is said, but to what is done.)

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis. 10 Co. 52.—(It matters not whether a man gives his assent by his words, or by his acts and deeds.)

Non refert quid ex æquipollentibus fiat, 5 Co. 122.—(It matters not which of [two] equivalents happens).

Non refert quid notum sit judici, si notum non sit in formâ judicii. 3 Buls. 115.—(It matters not what is known to the judge, if it be not known in a judicial form.) See COGNIZANCE JUDICIAL.

Non refert verbis an factis fit revocatio. Cro. Car. 49.—(It matters not whether a revocation is made by words or deeds.)

Non-residentio pro clerico regis, a writ, addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-residence; in which case he is to be discharged.—*Reg. Orig.* 58.

Non-resistance. See DIVINE RIGHT.

Non respondebit minor; nisi in causâ dotis, et hoc pro favore doti. 4 Co. 71.—(A minor shall not answer; unless in a case of dower, and this in favour of dower.)

Non-sane memory, a person labouring under mental alienation, which see.

Non sequitur (*it does not follow*).

Non solent quæ abundant, vitiare scripturas. Dig. 50, 17, 94.—(Surplusage is not wont to vitiate writings.) See *Utile per inutile non vitiatur*, in *Broom's Leg. Max.*

Non solvendo pecuniam ad quam clericus mulctatur pro non-residentiâ, a writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for non-residence.—*Reg. Writ.* 59.

Nonsuit [*non est prosecutus*, Lat.]. The judge orders a nonsuit when the plaintiff fails to make out a legal cause of action, or fails to support his pleadings by any evidence; whether the evidence which he gives can be considered any evidence at all of a cause of action is a question of law for the judge. By the former practice a plaintiff after a non-suit might, on paying all costs, re-commence his action; by the Rules of 1875 any judgment of nonsuit, unless the court or a judge should otherwise direct, had the same effect as judgment upon the merits for the defendant (Jud. Act, 1875, Ord. XLI., r. 6); but this rule has been rescinded, and is not reproduced. It is to be observed that the calling of the plaintiff is not an empty form, for he may always prevent a nonsuit by declaring that he is present, and desires to prosecute the suit. In that case the judge will direct the jury to find a verdict for the defendant, and if they find a verdict for the plaintiff it is a perverse verdict, and will be set aside by the Court, unless the court see reason to differ from the judge at *Nisi Prius*, as to the view he has taken of the case. On the other hand a plaintiff is entitled to elect to be nonsuited at any moment before the verdict is given. See TRIAL.

Non sum informatus, a formal answer

made of course by an attorney, that he was not informed to say anything material in defence of his client; by which he was deemed to leave it undefended, and so judgment passed against his client. See WARRANT OF ATTORNEY.

Non-summons, wager of law of, the mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.—31 *Eliz.* c. 3, s. 2; 2 *Saund.* 45 *c.*

Non temere credere est nervus sapientiæ. 5 Co. 114.—(Not to believe rashly is the nerve of wisdom.)

Non tenuit, was a plea in bar to replevin, to avowry for arrears of rent, that the plaintiff did not hold in manner and form, as the avowry alleged. See PLEADING.

Non-tenure, a plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It was either general, where one denied ever to have been tenant of the land in question, or special, where it was alleged he was not tenant on the day whereon the writ was purchased.—1 *Mod.* 181.

The distinction between real and personal actions has now practically ceased to exist. See ACTION.

Non-terminus, the vacation between term and term, formerly called the time or days of the king's peace. See now title TERMS.

Non-user. Neglect of official duty causes forfeiture.—2 *Bl. Com.* 153; and a right which may be acquired by user may be lost by non-user.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in hæreditate patris vel matris à quo non fuerit felonia perpetrata. 3 Co. 41. —(The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed.) This is not now the rule, for descendants can trace through a felon ancestor. See FELONY and FORFEITURE.

Non valet confirmatio nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione. Co. Litt. 295.—(Confirmation is not valid unless he who confirms is either in possession of the thing itself, or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.)

Non videntur qui errant consentire.—(They do not appear to consent who commit a mistake.) See *Broom's Leg. Max.*, 6th ed., 256.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. Bacon.—(He does not appear to have retained consent, who has changed anything through menaces.)

Non videtur quisquam id capere quod ei necesse est alii restituere. Dig. 50, 17, 51.—(No one is considered entitled to recover that which he must give up to another.)

Nook of land [*nocata terræ*, Lat.], twelve acres and a half, *sed qu.*—*Dugd. Warwick*, p. 665.

Norfolk groat, ¼*d.*

Norfolk Island. See 6 & 7 Vict. c. 35, and 32 & 33 Vict. c. 16.

Normal, opposed to exceptional; that state wherein any body most exactly comports in all its parts with the abstract idea thereof, and is most exactly fitted to perform its proper functions, is entitled normal.

Norman French, the tongue in which several formal proceedings of state are still carried on. The language, having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is handed down and preserved by the officials, who have, on particular occasions, to speak the tongue. Norman-French was the language of our legal procedure till the 36 Edw. III.

Norroy [fr. *nord* and *roy*, Fr.], the title of the third of the three kings-at-arms, or provincial heralds. See HERALDS.

Northampton, Statutes made at, 2 Edw. III., A.D. 1328, respecting pardons for felonies, conduct of assizes, etc.: in part repealed by Stat. Law Rev. Act, 1863.

North Britain, Scotland.

Noscitur ex socio, qui non cognoscitur ex se. Moore. 817.—(He who cannot be known from himself may be known from his associate.)

Noscitur a sociis: a test of construction of a single word; where there is a string of words in an Act of Parliament, and the meaning of one of them is doubtful, that meaning is given to it which it shares with the other words. So, if the words 'horse, cow, or other animal' occur, 'animal' is held to apply to brutes only. See EJUSDEM GENERIS.

Nosocomi, managers of pauper hospitals.—*Civ. Law.*

Notarial, taken by a notary.

Notary, or **Notary public** [fr. *notaire*, Fr.;

fr. *notarius*, Lat.], an officer who takes notes of anything which may concern the public; he attests deeds or writings to make them authentic in another country; but principally in mercantile affairs, as to make protests of bills of exchange, etc. He cannot permit another to act in his name, and in London he must be free of the Scriveners' Company. See 41 Geo. III. c. 79; 3 & 4 Wm. IV. c. 70; 6 & 7 Vict. c. 90; and 18 & 19 Vict. c. 42. Consult *Brooke on the Office, etc., of a Notary*, 3rd ed., by *Levi*.

Note a Bill, to. When a foreign bill has been dishonoured, it is usual for a notary public to present it again on the same day, and if it be not then paid to make a minute, consisting of his initials, the day, month, and year, and reason, if assigned, of non-payment. The making of this minute is called *noting the Bill*. See *Smith's Merc. Law*; *Byles on Bills*.

Note of a fine, a brief of a fine made by the chirographer before it was engrossed. Abolished by 3 & 4 Wm. IV. c. 74.

Note of allowance. This was a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings allowing him to bring error. See C. L. P. Act, 1852, s. 149. Error has now, however, been abolished (Jud. Act, 1875, Ord. LVIII., r. 1).

Proceedings in error in law were deemed a *supersedeas* of execution from the service of the copy of such note, together with the statement of the grounds of error intended to be argued.—*C. L. P. Act*, 1852, s. 150.

Note of hand, a promissory note. See PROMISSORY NOTE.

Notes, memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, etc. A copy of the judge's notes may be obtained from his clerk.

Not found, no true bill. See IGNORAMUS.

Not guilty, a plea by way of traverse which occurred in actions *ex delicto*, and amounted to a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant.

The plea of not guilty, in criminal proceedings, is the proper form wherever a prisoner means either to deny or justify the charge in the indictment; the effect of which plea is, that on the one hand it puts the prosecutor to the proof of every material fact alleged in the indictment or information, and on the other it entitles the defendant to avail himself of any defensive circumstances as amply as if he had pleaded them in a specific form.

Not guilty by statute. See GENERAL ISSUE.

Nothus [fr. νόθος, Gk.], a natural child, or a person of spurious birth.

Notice, the making something known to a person of which he was or might be ignorant. Notice is either (1) statutory, i.e., made so by legislative enactment; (2) actual, which brings the knowledge of a fact directly home to the party; or (3) constructive or implied, which is no more than evidence of facts which raise such a strong presumption of notice that equity will not allow the presumption to be rebutted. Constructive notice may be subdivided into: (*a*) where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and (*b*) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. See CONSTRUCTIVE NOTICE.

A purchaser with notice may protect himself by purchasing the title of another *bonâ fide* purchaser for a valuable consideration, without notice; for, otherwise, such *bonâ fide* purchaser would not enjoy the full benefit of his own unexceptionable title. If a person, who has notice (except in the case of a charity), sell to another, who has no notice, and is a *bonâ fide* purchaser for valuable consideration, the latter may protect his title, although it was effected with the equity arising from notice, in the hands of the person from whom he derived it; for, otherwise, no man would be safe in any purchase, but would be liable to have his own title defeated by secret equities, of which he could have no possible means of making a discovery.—*Le Neve* v. *Le Neve*, *Amb.* 436 (1747); 2 *W. & T. Lead. Cas.* 26, 6th ed.

A purchaser for valuable consideration, without notice of a prior equitable right, who obtains the legal estate at the time of his purchase, is entitled to priority in equity, as well as at law, according to the maxim: Where conflicting equities are equal the law shall prevail. Nor will equity prevent a *bonâ fide* purchaser, without notice, from protecting himself against a person claiming under a prior equitable title, by a getting in the outstanding legal estate, because, as the equities of both are equal, the purchaser should not be deprived of the advantage of his superior activity or diligence. And where he has merely the best right to call for the legal estate, he is entitled to the protection of equity.—*Bassett* v. *Nosworthy*, *Rep. temp. Finch*, 102 (1673); 2 *W. & T. Lead. Cas.* 1—25. See also PUBLIC NOTICE.

Notice in lieu of service. See SUMMONS.

Notice of action. By several statutes,—e.g., by 11 & 12 Vict. c. 44, s. 9,—both public and private, it is enacted that no action shall

be brought against persons, acting in pursuance of these statutes, until the expiration of a certain time after notice in writing has been given to the defendant that such action will be brought. The time limited has been made one month in all cases by 5 & 6 Vict. c. 97.

Notice of dishonour. The 49th section of the Bills of Exchange Act, 1882, 45 & 47 Vict. c. 61, contains 15 rules as to notice of dishonour, of which the more important are these :—

The notice must be given by or on behalf of the holder or of an indorser himself liable (subs. 1).

The notice may be given in writing or by personal communication. If written it need not be signed, and an insufficient written notice may be supplemented by a verbal communication (subs. 5, 7).

The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. 'In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

'Where the person giving and the person to receive notice *reside in the same place*, the notice is given or sent on in time to reach the latter on the day after the dishonour of the bill.

'Where the person giving and the person to receive notice *reside in different places*, the notice is sent off on the day after the dishonour of the bill if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.'

Notice of inquiry. The plaintiff must give a written notice of executing a writ of inquiry to the defendant or his solicitor. Ten days' notice must be given, unless it is to be short notice, and then four days are sufficient.—2 *Chit. Arch. Prac.* See further INQUIRY, WRIT OF, and NOTICE OF TRIAL.

Notice of Motion. See MOTION.

Notice of Trial may be given by a plaintiff with the reply, if any, or at any time after the issues of fact are ready for trial (R. S. C. 1883, Rule 11), or by a defendant, if not given by the plaintiff within six weeks after the close of the pleadings (Rule 12). Ten days' notice of trial must be given, unless the party to whom it is given has consented to take short notice; in which case four days are sufficient (Rule 14).

Notice of Writ, *against defendant out of jurisdiction.* See SUMMONS.

Notice to admit. The parties to a suit may, by their solicitors, agree to admit at the trial documents and facts; and such agreement often saves trouble and expense, where there is no ground for disputing them.

'Either party may call on the other by notice to admit any document saving all just exceptions, and in case of refusal, or neglect to admit, the costs of proving the document shall be paid by the party neglecting or refusing, whatever the result of the cause may be, unless at the hearing or trial the judge shall certify that the refusal was reasonable; and no costs of proving any document are allowed unless notice be given, except where the omission to give the notice is a saving of expense' (R. S. C. 1883, Ord. XXXII., r. 2). This rule is frequently acted upon. There is another (r. 4), providing for a notice to admit facts first introduced in 1883, and little used.

Notice to produce. If one party be in possession of any written instrument which would be evidence for the other if produced, a notice to produce it at the trial may be served either upon him, his solicitor, or agent. The notice must specify the instrument with a particularity sufficient to inform the opposite party what he is called upon to produce. It must be served a reasonable time before trial, so as to enable the party served to make an effectual search, and produce the same at the proper time.

It is optional with the party upon whom the notice has been served to produce the instrument required or not. If he do not, then, upon proving the service of the notice by affidavit, permission will be given to prove the contents of the instrument by a copy or other secondary evidence, in the same manner as if it had been lost.—1 *Chit. Arch. Prac.*

Notice may also be given (under R. S. C. 1883, Ord. XXXI.) by any party to an action to any other party in whose pleadings or affidavits any document is referred to, to produce such document for inspection, and to permit copies to be taken thereof.

Notice to quit. Where there is a tenancy from year to year subsisting, it can only be put an end to by a notice to quit, which may be given by either party, and must be given one half-year previously to the expiration of the current year of tenancy, so as to expire at the same period of the year in which the tenant entered upon the premises. This rule is to be invariably followed in all cases, except where there is some special agreement between the parties to a different effect, or where a particular local custom intervenes, or where the Agricultural Holdings Act, 1883, applies, in which case, by s. 33 of that Act, the half-year's notice required at Common Law is extended to a year's notice.

Where the term of a lease is to end on a

precise day, there is no occasion for a notice to quit previously to bringing an action of ejectment, because both parties are equally apprised of the determination of the term. If a tenant continue in possession for a year after his lease has expired, or rent has been received, a notice must be given before he can be ejected; for where, by consent of both parties, a tenant continues in possession after the expiration of his term the law implies a tacit renovation of the contract, and in such cases the tenant holds upon the former terms. No fresh notice, however, is necessary where a tenant, after having given a notice, holds over for a year, and pays double rent according to 11 Geo. II. c. 19, s. 18. Where a lessee holds under a void demise, no notice is necessary; but where a lease granted by a tenant for life under a limited power of leasing, which exceeded his power, was void, and not capable of being confirmed by the remainder-man, yet the remainder-man receiving money as rent after the death of the tenant for life, it was held to be an admission of a tenancy from year to year, and that a notice to quit must be given before any ejectment could be brought. And though a lease be void by the Statute of Frauds as to the duration of the term, it is considered that the tenant holds under the terms of the lease in other respects, and therefore that the landlord can only put an end to the tenancy at the expiration of the year. In the case of a tenancy from year to year, so long as both parties please, if the tenant die his personal representatives have the same interest in the land which their testator or intestate had, and are, therefore, entitled to the same notice to quit; for such tenancy is a chattel interest, and whatever chattel the deceased had must vest in them as his legal representatives. Where the reversion has been conveyed by the lessor during the existence of the tenancy from year to year, the tenant is entitled to a notice to quit before he can be ejected by the grantee of the reversion. No notice to quit is necessary where the tenant does an act which amounts to a disavowal of the title of the lessor; as where the tenant has attorned to some other person, or answered an application for rent by saying that his connection as tenant with the party applying has ceased. It is not necessary for a mortgagee to give a notice previously to bringing an ejectment either to the mortgagor or to a tenant who claims under a lease from the mortgagor, granted after the mortgage without the privity of the mortgagee. And a mortgagee need not give notice to a tenant to quit, before bringing his ejectment, if he means only to get into the receipt of the rents and profits of the estate, though the mortgage be made subsequently to the tenant's lease; but in such case he shall not be suffered to turn the tenant out of possession by the execution. A tenant from year to year, whose tenancy commenced before a mortgage or grant of the reversion, is entitled to a notice to quit before he can be ejected by the mortgagee or grantee.

A parol notice to quit by a tenant under a parol lease is sufficient, but where a power is given to determine a lease on giving a notice in writing, it cannot be determined on giving a parol notice. The notice should, however, in all cases be in writing, as being more susceptible of proof, and it may be attested by a witness, who, however, need not be called to prove it.—*C. L. P. Act* (1854), s. 26.

A notice to quit, signed by one of several joint-tenants on behalf of the others, is sufficient to determine a tenancy from year to year, as to all. A notice given by a mortgagor before default, was held a good notice to determine the tenancy; and a notice given by a steward of a corporation is sufficient, without evidence that he had an authority under seal from the corporation for such purpose. A receiver appointed by the Court of Chancery, with a general authority to let the lands to tenants from year to year, has authority to determine such tenancies by a regular notice to quit. A mere agent to receive rents has no implied authority to give a notice to quit, but an agent to receive rents and let has authority to determine a tenancy. An agent ought to have authority to give such notice at the time when it begins to operate; for a subsequent recognition of the authority will not make the notice good. And a notice to quit by an agent of an agent is not sufficient without a recognition. A notice on an under-tenant, given by the original lessor, is not good.

The notice should be clear and certain, neither ambiguous nor optional. Leaving a notice to quit at the tenant's house with a servant, without further proof of its having been explained to the servant, or that it came to the tenant's hands, is not sufficient.

If a landlord receive or distrain for rent due after the expiration of a notice to quit it is a waiver of that notice, and giving a second notice to quit amounts to waiver of a notice previously given. If a landlord have given a notice to quit, and the tenant holds over, the landlord cannot waive his notice and distrain for rent subsequently accruing. If, at the end of the year (where there has been a tenancy from year to year), the landlord accept another person as his tenant in the room

of the former tenant, without any surrender in writing, such acceptance is also a waiver of a notice to quit.—See *Woodfall's Landlord and Tenant*, 14th ed., ch. viii., sect. 7.

Notice to third party, i.e., to a person not being a party to the writ of summons in an action. See THIRD PARTY.

Noting. It is usual, in cases of non-payment of bills of exchange, for London bankers after six o'clock on the day upon which the bills fall due, to cause inland bills to be noted, which is merely the first part of the duty required by law of a notary in protesting a bill. This duty consists of three parts: (1) noting; (2) demanding; and (3) protesting. In the case of inland bills, a protest being totally useless, it follows that noting is almost equally so; and the expense usually charged stands merely upon the custom, there being no law or decision in its favour.

Although, in the case of inland bills of exchange, neither noting nor protesting is necessary, the case is widely different in the case of a dishonoured foreign bill, which should certainly be taken to a notary the day it is refused acceptance or payment, and it is his business to note, demand, and protest it; and notice of this must be sent the same day to the drawer and indorsers, with a copy of the bill, if the drawer and indorsers are abroad, but mere notice is sufficient if they are in England. See Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 51.

Nova constitutio futuris formam imponere debet non præteritis. 2 Inst. 292.—(A new state of the law ought to affect the future, not the past.)

Not proven, a verdict allowed to be given in criminal trials in Scotland. A prisoner in whose case it is pronounced cannot be tried again.

Nova customa, an imposition or duty. See ANTIQUA CUSTOMA.

Nova oblata. See OBLATA.

Nova Statuta, the statutes beginning with Edward III. See VETERA STATUTA.

Novæ Narrationes (*new counts*). The collection called *Nova Narrationes* contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli ad Novas Narrationes* is usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents.—3 *Reeves*, c. xvi. 152.

Novale, land newly ploughed and converted into tillage, and which had not been tilled before within the memory of man; also fallow land.—*Chambers*.

Novation, the substitution, with the creditor's consent, of a new debtor for an old one, as in the case of amalgamated life assurance companies, under 35 & 36 Vict. c. 41, s. 7. See *Bouvier's Law Dictionary*.

Novatio non præsumitur.—(A novation is not presumed.)

Novel disseisin (*recent disseisin*). See ASSISE OF NOVEL DISSEISIN.

Novellæ, those constitutions of the Civil Law which were made after the publication of the Theodosian code; but sometimes the Julian edition only is meant.

Novellæ, or *Novellæ Constitutiones*, form a part of the *Corpus Juris*. Most of them were published in Greek, and their Greek title is Αὐτοκράτορος Ἰουστινιάνου Αὐγούστου Νεαραὶ Διατάξεις. Some of them were published in Latin, and some in both languages.

The first of these Novellæ of Justinian belongs to the year A.D. 535 (Nov. 1), and the latest to the year A.D. 565 (Nov. 137), but most of them were published between the years 535 and 539. These Constitutiones were published after the completion of the second edition of the code, for the purpose of supplying what was deficient in that work. Indeed it appears that on the completion of his second edition of the new Code, the emperor designed to form many new constitutions which he might publish into a body by themselves, so as to render a third revision of the Code necessary, and that he contemplated giving to this body of law the name of *Novellæ Constitutiones*.—*Const. Cordi*. s. 4.

It does not, however, appear that any official compilation of these new constitutions appeared in the lifetime of Justinian. The Greek text of the Novellæ, as we now have them, consists of 168 Novellæ, of which 159 belong to Justinian, and the rest to Justin the Second and to Tiberius; they are generally divided into chapters. There is a Latin epitome of these Novellæ, by Julian, a teacher of the law at Constantinople, which contains 125 Novellæ. The epitome was probably made in the time of Justinian, and the author was probably Antecessor, at Constantinople. There is also another collection of 134 Novellæ, in a Latin version made from the Greek text. This collection is generally called *Liber Authenticorum*; the compiler and the time of the compilation are unknown. This collection has been made independently of the Greek compilation. It is divided into nine *collationes*, and the *collationes* are divided into *tituli*. The most complete work on the history of the Novellæ is by Biener, *Geschichte*

der Novellen. See also *Beytrag zu Litterar-Geschichte des Novellen Auszugs von Julian Von Haubold, Zeitschrift,* etc., iv.; *Smith's Dict. of Antiq.*

Noviter ad notitiam perventa (*matters newly come to the knowledge of a party*).

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum. 10 Co. 42.—(A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden.)

Novus homo. A pardoned criminal or discharged insolvent; a parvenu.

Noxa sequitur caput. Jur. Civ.—(Guilt follows the person.)

Noxal action, an action for damage by irrational animals.—*Sand. Just.*, 7th ed., 465.

Nuces colligere (*to collect nuts.*)

This was formerly one of the works or services imposed by lords upon their inferior tenants.—*Par. Antiq.* 495.

Nuda pactio obligationem non parit. Dig. 2, 14, 7, s. 4.—(A naked agreement [i.e., without consideration] does not beget an obligation.)

Nudum Pactum (*a naked agreement*), an agreement made without any consideration, upon which, therefore, unless it be made by deed, no action will lie in conformity with the maxim *ex nudo pacto non oritur actio.*

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. Plow. 309.—(A naked contract is where there is no consideration except the agreement; but where there is a consideration, it becomes an obligation, and gives a right of action.)

Nuisance, or **Nusance** [fr. *nuire,* Fr., to hurt], something noxious or offensive.

It is of two kinds: (1) private; (2) public.

(1) *Private.* It is a principle that every man should so use his own property as not to injure another; and if he act otherwise he subjects himself to an action. An action lies as well against him who continues a nuisance as against him who originally erected it.

(2) *Public* or *common,* which are classed amongst crimes and misdemeanours, and are annoyances to all the Queen's subjects, whether by act of commission or omission; and when they annoy private individuals only, they form the subject of a civil action. But they are generally indictable only, and not actionable, for it would be unreasonable to multiply suits, by giving every man a separate right of action for what damnifies him in common only with all others.

Examples of public nuisances are:—

(*a*) Annoyances in the highways, bridges, and public rivers, by rendering the same inconvenient or dangerous to pass, either positively, by actual obstructions, or negatively, by want of reparations.

(*b*) All those kinds of nuisances (such as offensive trades and manufactures), which, when injurious to a private person, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to a fine according to the nature of the offence.

(*c*) Bawdy-houses, gaming-houses, and betting-houses (see 16 & 17 Vict. c. 119, s. 1).

As to the equitable jurisdiction in granting injunctions:—An action lies, in cases of public nuisances, at the suit of the Attorney-General, to redress the grievance by way of injunction; but the interposition of the Court is principally confined to actions seeking preventive relief. In regard to private nuisances, the interference of equity, by way of injunction, goes upon the ground of restraining irreparable mischief, or of suppressing oppressive and interminable litigation, or of preventing multiplicity of suits. There must be such an inquiry as from its nature is not susceptible of being adequately compensated by damages at law, or such as from its continuance or permanent mischief must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction. When the injury is irreparable, as where loss of health, loss of trade, destruction of the means of subsistence, or permanent ruin to property, may or will ensue, from the wrongful act or erection; in every such case equity will interfere by injunction, in furtherance of justice and the violated rights of the party.—2 *Story's Eq. Jurisp.* 180. See INJUNCTION; and as to the removal of nuisances, see next title.

Nuisances Removal Acts.—These Acts were the 18 & 19 Vict. c. 121; 23 & 24 Vict. c. 77; 26 & 27 Vict. c. 117; 29 & 30 Vict. c. 41; and 35 & 36 Vict. c, 79, repealed and replaced (except as to the Metropolis) by the Public Health Act, 1875, and repealed as to the Metropolis by the Public Health (London) Act, 1891, which replaced them with amendments. See PUBLIC HEALTH.

Nul charter, nul vende, ne nul done vault perpetualment, si le donor n'est seise al temps de contracts de 2 droits, sc. del droit de possession et del droit de propertie. Co. Litt. 266.—(No grant, no sale, no gift, is valid for ever, unless the donor, at the time of the contract, is seised of two rights; namely, the right of possession, and the right of property.)

Nul disseisin, Plea of, a traverse in real

actions, that there was no disseisin; it was a species of the general issue.

Nul prendra advantage de son tort demesne. 2 Inst. 713.—(No one shall take advantage of his own wrong.)

Nul sans damage avera error ou attaint. Jenk. Cent. 323.—(No one shall have error or attaint unless he has sustained damage.)

Nul-tiel agard (*no such award*), a plea traversing an award. Under this plea a defendant could not object to the award in point of law.—1 *Salk.* 72. 1 *Saund.* 327 *a.*

Nul-tiel record, Issue of, a traverse that there is no such record. This was the proper form of issue whenever a question arose as to what had judicially taken place in a superior court of record; for the law presumes that, if it took place, there will remain a record of the proceeding.—3 *B. and C.* 449.

Nul tort, Plea of, a traverse in a real action that no wrong was done; it was a species of the general issue.

Nulla bona (*no goods*), a return made by a sheriff to a *fi. fa.* attachment, etc., when there is no property to distrain upon.

Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo. 8 Co. 60.—(No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record.)

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia. Co. Litt. 78.—(Impossibilities or dishonesty are not to be presumed; but honesty, and truth, and possibility.)

Nullâ pactione effici potest ut dolus præstetur. (I cannot effectually contract with any one that he shall charge himself with the fraud which I commit.) *Broom's Leg. Max.*, 6th ed., 652.

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestiâ. Co. Litt. 394.—(Without modesty, no virtue, no knowledge, can preserve its place and dignity.)

Nullity, want of force or efficacy; an error in litigation which is incurable, and thus differs from an irregularity which is amendable.

Nullity of marriage, a matrimonial suit instituted for the purpose of obtaining a decree, declaring that a supposed marriage is null and void. See MARRIAGE.

The Matrimonial Causes Act, 1873, 36 Vict. c. 31, extends to proceedings for nullity of marriage, the provisions of 23 & 24 Vict. c. 144, s. 7, and 29 & 30 Vict. c. 32, s. 3, with reference to the intervention of the Queen's proctor. See INTERVENTION, and *Browne's Pr. in Div. and Mat. Causes.*

Nullius filius (*a son of nobody*, i.e., *a natural child*). See BASTARD.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. Co. Litt. 383.—(The authority of no man ought to prevail with us, so that we should not adopt better things, if another bring them to us.)

Nullum exemplum est idem omnibus. Co. Litt. 212.—(No example is the same in every part.)

Nullum iniquum est præsumendum in jure. 7 Co. 71.—(No iniquity is to be presumed in law.)

Nullum simile est idem nisi quatuor pedibus currit. Co. Litt. 3.—(No like is identical, unless it run on all fours.)

Nullum tempus aut locus occurit regi. 2 Inst. 273; Jenk. Cent. 83.—(No time or place affects the king.) But see 9 Geo. III. c. 16, commonly called the 'Nullum Tempus Act,' by which the right of the Crown to sue was limited to 64 years; and 24 & 25 Vict. c. 62.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. Co. Litt. 134.—(No other than the king can command the bishop, to make an inquisition.)

Nullum Tempus Act. See *supra.*

Nullus commodum capere potest de injuriâ suâ propriâ. Co. Litt. 148.—(No one can obtain an advantage by his own wrong.)

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et comfortavit. 3 Inst. 138.—(No one is called an accessory after the fact but he who knew the principal to have committed a felony, and received and comforted him.)

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam.—(No one is called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.)

Nullus videtur dolo facere qui suo jure utitur. Dig. 50, 17, 55.—(No one is considered to act with guile who uses his own right.) See *Broom's Leg. Max*, 6th ed., 121.

Nummata, the price of anything in money, as *denariata* in the price of a thing by computation of pence, and *librata* of pounds.

Nummata terræ, an acre of land.—*Spelm.*

Nummus [ἀπὸ του νόμου] *quia lege fit non naturâ.* Co. Litt. 207.—(Money [from the Greek νόμος], because created by law, not by nature.)

Nummus est mensura rerum commutandarum.—(Money is the measure of things to be exchanged.)

Nunc pro tunc, a proceeding taken *now*

for *then*, i.e., the proper time when it should have been taken. See *Chit. Arch. Prac.*, 12th ed., 526, 1572.

Nuncio, a messenger, servant, etc.; a spiritual envoy from the Pope.

Nuncupate, to declare publicly and solemnly.

Nuncupative will, an oral or word-of-mouth testament, declared by a testator *in extremis* before a sufficient number of witnesses, and afterwards reduced to writing.

The 29 Car. II. c. 3, restricted nuncupative wills, except when made by mariners at sea, and soldiers in actual service. See 1 *Wms. Exors.*, 8th ed., p. 117. Nuncupative wills are abolished by 1 Vict. c. 26, s. 9, but with a provision by s. 11, that any soldier being in actual military service, or any marine or seaman being at sea, may dispose of his personal estate, as he might have done before the making of this Act. See 11 Geo. IV. & Wm. IV. c. 20; and 28 & 29 Vict. c. 72.

Nundination, traffic at fairs and markets; any buying and selling.

Nunquam indebitatus. See NEVER INDEBTED.

Nunquam concluditur in falso.—(We never conclude with a fiction.)

Nunquam crescit ex post facto præteriti delicti æstimatio. Bac. Max. Reg. 8.—(The estimation of a past offence is never increased by an after fact.)

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. 4 Inst. 84.—(Recourse is never had to what is extraordinary, till what is ordinary fails.)

Nunquam res humanæ prosperè succedunt ubi negliguntur divinæ. Co. Litt. 15.—(Human things never prosper where divine things are neglected.)

Nuper obit (*he lately died*), an abolished writ that lay for a sister and co-heir, deforced by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee simple.—*F. N. D.* 197.

Nuptial, pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit. Co. Litt. 33.—(Not cohabitation but consent makes the marriage.)

Nurture, Guardianship of. See GUARDIAN.

Nurus [Lat.], a daughter-in-law.

Nuzzer, a vow, an offering, a present made to a superior.—*Indian.*

O.

Oath [fr. *ath*, Sax.; *ehe*, *eid*, Germ.], an appeal to God to witness the truth of a statement. It is called *corporal oath*, where a witness, when he swears, places his right hand on the Holy Evangelists.

The Christian religion, though it prohibits swearing, excepts oaths required by legal authority (*Art. Ch. of Engl.* xxxix.). All who believe in a God, the avenger of falsehood, have always been admitted to give evidence, but the old rule was, that all witnesses must take an oath of some kind. Very gradually, however, the legislature has relaxed this rule, and the privilege of affirming (see AFFIRMATION) instead of taking an oath has now been universally granted by the Oaths Act, 1888, 51 & 52 Vict. c. 46, by which 'every person on objecting to being sworn, and stating as the ground of such objection, *either* that he has no religious belief, *or* that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, and by s. 3 of the same Act, if an oath has been duly taken the fact that the person taking it had no religious belief does not affect its validity.

The 'Statutory Declarations Act, 1835,' 5 & 6 Wm. IV. c. 62,—so called by virtue of s. 68 of the Conveyancing Act, 1881,—abolishes unnecessary and extra-judicial oaths, and empowers any justice of the peace, notary-public, or other officer authorised to administer an oath to take voluntary declarations in the form specified in the Act. And any person wilfully making such declaration false in any material particular, is guilty of a misdemeanour.

Witnesses are allowed to swear in that particular form which they consider binding on their conscience. See *Omichund & Barker*, 1 *Smith's L. C.*, and 1 & 2 Vict. c. 105.

Promissory oaths are those required to be taken by persons on their appointment to certain offices, as the oath of allegiance, of which the present form is, 'I ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law.'

These oaths have undergone much revision of late years by Parliament. By the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), a number of unnecessary oaths have been abolished, and declarations substituted. That Act also provides new forms of the Oath of Allegiance, Judicial Oath, and Official Oath to be taken by particular officers. The Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), expressly repeals a number of Acts already impliedly repealed.

The Parliamentary Oaths Act, 1866, 29

Vict. c. 19, requires the oath of allegiance to be taken by members of parliament before sitting or voting, and the Promissory Oaths Act, 1868, substitutes a new form of oath, but does not otherwise alter the Act of 1866. By the Act of 1866 a Quaker or other person, permitted by law to affirm, may make affirmation instead of oath; but an atheist, although permitted by law (see AFFIRMATION) to affirm in a court of justice, would not affirm under this Act (*Clarke* v. *Bradlaugh*, 7 *Q. B. D.* 38), and in Mr. Bradlaugh's case the House of Commons, when he was first elected, refused to allow him to make oath, so that he could not take his seat; but Mr. Bradlaugh, on being re-elected to a subsequent Parliament, made oath without objection, and the Oaths Act, 1888, now allows an affirmation in all places and for all purposes.

The administering of unlawful oaths is an offence against the Government, and punishable by penal servitude. The following statutes relate to this offence: 37 Geo. III. c. 123; 39 Geo. III. c. 79; 52 Geo. III. c. 104; 57 Geo. III. c. 19; 1 Vict. c. 91.

As to "Commissioners for Oaths," see that title.

Obedientia, an office, or the administration of it.—*Canon Law.*

Obedientia est legis essentia. 11 Co. 100.—(Obedience is the essence of law.)

Obedientiarius, a monastic officer.—*Du Cange.*

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare, nisi prius convictus fuerit vel confessus in curiâ. Glanv. lib. 14, c. ii.—(On account of evil report, it is not usual, according to the law of the land, for any person to purge himself unless he have been previously convicted, or confessed in court.)

Obit [a corruption of the Latin *obiit*, or *obivit*, he died], a funeral solemnity or office for the dead; the anniversary office.

The tenure of obit, or obituary, or chantry lands is taken away by 1 Edw. VI. c. 14, and 15 Car. II. c. 9.

Obiter dictum (*a saying by the way*), an opinion of a judge not necessary to the judgment given of record, in contradistinction to a *judicial dictum*, which is necessary to the judgment.

This last is of much greater authority than the former, because delivered upon deliberation, under sanction of the judge's oath, while an extra-judicial opinion is no more than the *prolatum* or saying of him who gives it, a *gratis dictum.*

Objection to evidence. If a document, or question to a witness, tendered by one party, be objected to, all the counsel on the side objecting may be heard against the admissibility, and all on the other side may be heard in support; the senior counsel on the first side is heard in reply.

Objection to indictment. On this being taken, the same course is followed as set out under the last title.

Objurgatrices, scolds, or unquiet women, punished with the cucking-stool. See CASTIGATORY.

Oblata, gifts or offerings made to the king by any of his subjects; old debts, brought as it were together from preceding years, and put on the present sheriff's charge.

Oblata terræ, half an acre, or, as some say, half a perch of land.—*Spelm.*

Oblationes dicuntur quæcunque a piis fidelibusque Christianis offeruntur Deo et ecclesiæ, sive res solidæ sive mobiles. 2 Inst. 389.—(Those things are called oblations which are offered to God and the church by pious and faithful Christians, whether they are movable or immovable.) See next title.

Oblations, offerings to God and the Church, fees payable to the clergy for marrying, burying, and by way of 'Easter Offerings.' See *Reg.* v. *Hall*, *L. R.* 1 *Q. B.* 638.

Baptismal fees were abolished by 35 & 36 Vict. c. 36.

Obligation, an act which binds a person to some performance; also a bond containing a penalty, with a condition annexed for paying of money at a certain time; or for the performance of a covenant, etc. As to the divisions of obligations in the civil law, see *Sand. Just.*, 7th ed., lvi.; *Rutherf.*, vol. i., pp. 31, 33, 34; and *Notes*, c. ix.

Obligee, the person in whose favour an obligation or bond is entered into; a creditor.

Obligor, he who enters into an obligation or bond, a debtor.

Obliqua oratio, the manner of reporting a speech in which 'he,' not 'I,' stands for the speaker in giving his words; and hence the words 'you,' 'your,' never occur, and every sentence begins with the word *that* expressed or understood, but generally expressed in the first sentence only. It is opposed to the *oratio directa*, sometimes called a speech in the first person, in which the very words of the speaker are given.

Obreption, the obtaining a gift of escheat by a false suggestion.—*Bell's Scotch Law Dict.*

Obscene Publication Act, 20 & 21 Vict. c. 83. See INDECENT PRINTS.

Obsignatory, ratifying and confirming.

Obstetricante Manu [*by the hand of a midwife*, Lat.], said of evidence of a child helped out by its nurse, etc.

Obstriction, obligation; bond.

Obtemperandum est consuetudini rationabili tanquam legi. 4 Co. 38.—(A reasonable custom is to be obeyed as a law.)

Obtest, to protest.

Obventions, offerings; tithes and oblations.

Occasio, a tribute which the lord imposed on his vassals or tenants for his necessity.

Occasionari, to be charged or loaded with payments or occasional penalties.

Occasiones, assarts.—*Spelm. voce 'Essartum.'* See ASSART.

Occultatio thesauri inventi fraudulosa. 3 Inst. 133.—(The concealment of discovered treasure is fraudulent.)

Occupancy, taking possession of those things which before did not belong to anybody.

The right of occupancy has been confined by the laws of England within a very narrow compass, and was extended only to a single instance; namely, where a person was tenant *pur autre vie,* or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation, during the life of the *cestui que vie,* or him by whose life it was holden; in this case, he that could first enter on the land might lawfully retain the possession so long as the *cestui que vie* lived, by right of occupancy. The title of common occupancy is now, in effect, abolished, for it is enacted by 1 Vict. c. 26, s. 3, that an estate, *pur autre vie,* of whatever tenure, and whether it be an incorporeal or corporeal hereditament, may in all cases be devised by last will and testament; and by s. 6, that if no disposition by will be made of an estate *pur autre vie* of a freehold nature, it shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy as assets by descent (as in the case of freehold land, in fee-simple); and should there be no special occupant of any estate *pur autre vie,* it shall go to the executor or administrator of the party that had the estate by virtue of the grant; and in every case where it comes to the hands of such personal representative, shall be assets in his hands, to be applied and distributed in the same manner as personal estate.

If an estate *pur autre vie* had been granted to a man and his heirs during the life of the *cestui que vie,* and the grantee died without alienation, while the life for which he held continued, there could not be a title by *common* occupancy, but the heir would succeed as *special* occupant, which law is now in force.

A property in goods and chattels may be acquired by occupancy, for—

(1) It has been said, that anybody authorised by the Crown may seize to his own use such goods as belong to an alien enemy.

(2) All persons may, on their own lands, or in the seas, generally exercise the right to pursue and take any fowl or insect of the air, any fish or inhabitant of the waters, and any beast or reptile of the field. The exceptions to this right are royal fish, such as whales, sturgeons, etc., animals of forest, chase, or free warren, fish belonging to a free fishery, and game.

(3) Property arising from accession. See ACCESSION, PROPERTY BY.

(4) Property arising from confusion. See CONFUSION, PROPERTY BY.

Occupant, he who is in possession of a thing. See OCCUPANCY.

Occupatile, that which has been left by the right owner, and is now possessed by another.

Occupation, possession; act of taking possession; also, trade or mystery.

Occupative, possessed, used, employed.

Occupavit, a writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one disseised in time of peace.

Occupier, the person residing in or upon or having a right to reside in or upon any house, land, or place; ratable to the poor rate under 43 Eliz. c. 2, and as 'inhabitant occupier' entitled to the parliamentary franchise, under the Representation of the People Acts, 1867 and 1884.

Occupier's Liability Notice, the notice which the owner of land, out of which tithe rent-charge issues, is required, by subs. 6 of s. 2 of the Tithe Act, 1891, to give to the owner of the tithe rent-charge of the liability of the occupier of the land, under a contract made before the Act, to pay such tithe rent-charge to such owner of land. Unless this notice (which is styled an 'occupier's liability notice' by r. 3 of the Tithe Rent-charge Recovery Rules, 1891), is served as required by the Tithe Act, 1891, the landowner may not recover from the occupier any sum which he has paid for tithe rent-charge, without a certificate from the County Court 'that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.' For form of notice, see Thring's Tithe Act, 1891, at p. 58.

Ochiern, a name of dignity; a freeholder. —*Skene.* Obsolete.

Ochlocracy [fr. ὄχλος, Gk., a multitude, and κράτος, power or command], a form of government wherein the populace has the whole power and administration in its own hand; a democracy; mob-rule.

Octo tales. See DECEM TALES.

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine pœnæ.—(Good men hate sin through love of virtue; bad men through fear of punishment.)

Odhal, alodial, which see.

Odio et atiâ, a writ anciently called *breve de bono et malo,* addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder, were committed on just cause of suspicion, or only upon malice and ill-will; and if, upon the inquisition, it were found that he was not guilty, then there issued another writ to the sheriff to bail him.—*Reg. Orig.* 133. But the practice now is to issue a *habeas corpus.*

Odiosa et inhonesta non sunt in lege præsumenda; et in facto quod se habet ad bonum et malum, magis de bono quam de malo præsumendum est. Co. Litt. 78.—(Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the presumption should be more in favour of what is good than what is bad.)

Œconomicus, an executor.

Œcumenical. See ECUMENICAL.

Off-going crop. See AWAY-GOING CROPS.

Offence, crime; act of wickedness. It is used as a *genus,* comprehending every crime and misdemeanour, or as a *species,* signifying a crime not indictable, but punishable summarily, or by the forfeiture of a penalty.

There are certain acts which are heinous sins and odious in the public eye, and are punishable in the Ecclesiastical Courts—as incest—but not being punishable at Common Law, and the proceedings in the Ecclesiastical Courts being held to be *pro salute animæ,* and not to entail any temporal injury, they cannot be classed with ordinary Common Law and statutory offences: and it is no slander to impute them unless special damage follows.

Other offences are divided into three classes, viz.:—

(1) Treasons; (2) Felonies; and (3) Misdemeanours. See these several titles.

In 1861, six Acts were passed for the consolidation and amendment of the statute law of England and Ireland relating to certain criminal offences. By 24 & 25 Vict. c. 95, several previous Acts were repealed; c. 96 dealt with larceny and other similar offences; c. 97 with malicious injuries to property; c. 98 with forgery; c. 99 with offences relating to the coin; and c. 100 with offences against the person.

Consult *Russell on Crimes; Archbold's* or *Roscoe's Criminal Evidence;* and *Pritchard on Quarter Sessions.* For a list of offences punishable on summary conviction and on indictment respectively, see *Oke's Magisterial Synopsis.*

Offerings, personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, churching of women, burials, etc.; or at constant times, as at Easter, Christmas, etc.—2 & 3 *Edw. IV.* cc. 13, 20, 21.

Offertorium, the offerings of the faithful, or the place where they are made or kept; the service at the time of Communion.

Office, that function by virtue whereof a person has some employment in the affairs of another, whether judicial, ministerial, legislative, municipal, ecclesiastical, etc.—*Cowel.* It is a species of incorporeal hereditament.—2 *Bl. Com.* 36.

Office, Inquest of. See INQUEST OF OFFICE.

Office-copy, a transcript of a proceeding filed in the proper office of a court under the seal of such office. As to when office-copies are receivable in evidence, see *Taylor on Evidence,* s. 1322 *et seq.*; and as to official marking, etc., see R. S. C. 1883, Ord. LXVI., r. 7.

Office-found, the finding of a jury in an inquest of office of a fact which entitles the Crown to the possession of lands or tenements, goods or chattels. See INQUEST OF OFFICE, and see FORFEITURE.

Office of a Judge: the prosecutor in an ecclesiastical criminal suit is called the *promotor officii judicis.* He is either *necessarius* when the prosecution is *ex mero motu judicis,* or *voluntarius.*—*Oughton, Ordo Judiciorum.*

Officers of the Supreme Court. By the Judicature Act, 1873, s. 77, the officers of the various courts, whose jurisdiction is by that Act transferred to the High Court of Justice, or the Court of Appeal, were attached to the Supreme Court; by the Judicature Act, 1875, Ord. LX., r. 1, these officers were attached to the divisions which represented the courts of which they were formerly officers; and by the Judicature (Officers) Act, 1879, 42 & 43 Vict. c. 78, they were transferred to the Central Office of the Supreme Court.

Offices of the Supreme Court. The several offices of the Supreme Court are to be opened on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas-day and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.—*R. S. C.* 1883, *Ord. LXIII.,* r. 6.

As to the vacations in the Offices of the Supreme Court, see VACATION.

Officio magistratus non debent esse venalia.

Co. Litt. 234.—(The offices of magistrate ought not to be sold.)

Official, pertaining to a public charge.

In the Civil Law, he is a minister of, or attendant upon, a magistrate. In the Canon Law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, i.e., chancellor; the rest, if there are more, are *officiales foranei*, i.e., commissaries. In our statutes, he is the person whom the archdeacon appoints as his substitute. *Wood's Inst.* 30, 505.

Official assignees, certain persons from the class of merchants or accountants who were appointed by the Lord Chancellor under the Bankruptcy Act, 1849 and 1861, to act in bankruptcies; one of whom must have been an assignee of the bankrupt's estate and effects, together with the assignee or assignees chosen by the creditors. All the personal estate, the profits of the realty, and the proceeds of all such estates as were sold were received by such official assignees alone, and paid into the Bank of England to the credit of the accountant in Bankruptcy. These officials ceased to exist under the system of bankruptcy introduced in 1869, but the 'Official Receivers,' established by the Act of 1883, greatly resemble them.

Official liquidators, officers appointed to conduct the proceedings and to assist the court in winding up a joint-stock company.—25 & 26 *Vict.* c. 89, s. 92.

Official log-book, a log-book in a certain form, and containing certain specified entries required by 17 & 18 Vict. c. 104, ss. 280—282, to be kept by all British merchant ships, except those exclusively engaged in the coasting trade.

Official Managers, persons formerly appointed, under statutes now repealed, to superintend the winding up of insolvent companies under the control of the Court of Chancery.

Official oath. By the 31 & 32 Vict. c. 72, a form of 'official oath' is prescribed, to be taken by each of the officers named in the schedule annexed thereto, as soon as may be after his acceptance of office by the officer.

Official Receivers, officers appointed by the Board of Trade under s. 66 of the Bankruptcy Act, 1883, to act as interim receivers and managers of bankrupts' estates, pending the appointment of trustees in bankruptcy.

Official Referee. See REFERENCE.

Official Secrets. By the Official Secrets Act, 1889, 52 & 53 Vict. c. 52, where a person by means of holding or having held office under the Crown, has lawfully or unlawfully obtained possession of any document, etc., or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, etc., or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he is guilty of a breach of official trust, and guilty of felony if the communication was made to a foreign State, and in any other case is guilty of a misdemeanour.

Official trustees of charities, appointed by 16 & 17 Vict. c. 137, amended by 18 & 19 Vict. c. 24.

Official use, an active use before the Statute of Uses, which imposed some duty on the legal owner or feoffee to uses, as a conveyance to A. with directions for him to sell the estate and distribute the proceeds amongst B., C., and D. To enable A. to perform this duty he had the legal possession of the estate to be sold.

Officialty, the court or jurisdiction of which an official is head.

Officiariis non faciendis vel amovendis, a writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, etc.—*Reg. Orig.* 126.

Officina justitiæ, a department of the Common Law jurisdiction of Chancery, out of which original writs issued.

Officio, Ex. By virtue of his office; e.g., the Lord Chief Justice of England is a member of the Court of Appeal, *ex officio.*

Officio, Ex, Oath of, an oath whereby a person might be obliged to make any presentment of any crime or offence, or to confess or accuse himself of any criminal matter whereby he might be liable to any censure, penalty, or punishment.—3 *Bl. Com.* 447.

Officious will, a testament by which a testator leaves his property to his family.—*Sand. Just*, 5th ed., 207.

Officium nemini debet esse damnosum.—(An office ought to be injurious to no one.)

Old Bailey Sessions. These were superseded by the Central Criminal Court, which see.

Old Lodger. See LODGER.

Old metal, Dealers in. See 24 & 25 Vict. c. 110; and see 32 & 33 Vict. c. 99, s. 17.

Old style. See NEW YEAR'S DAY.

Old tenures, a treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was holden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having

led the way to Littleton's famous work.—3 *Reeves*, 151.

Oleron, an island lying in the Bay of Acquitain, at the mouth of the river Charente, formerly in the possession of England. The inhabitants of Oleron have been able mariners for seven or eight hundred years past. They are said to have drawn up the laws of the navy still called the Laws of Oleron. According to the French writers, these maritime laws were digested as the *Rèole des Jugemens d'Oleron*, by direction of Queen Eleanor, wife of Henry II. as Duchess of Guienne, and enlarged and improved by her son Richard I. Selden (*de Dom. Mar.* c. xiv.) maintains that they were compiled and promulgated by Richard I. as King of England. Writers, as Mons. Boucher, of Paris, and the English Luders, consider the whole account fallacious. The former calls the story of our Richard I. and Queen Eleanor, *une chimère des plus invraisemblables.—Monthly Review*, Dec. 1811. The laws of Oleron were to a great extent the foundation of the maritime laws of most states of Europe.

Oligarchy, a form of government wherein the administration of affairs is lodged in the hands of the few persons.

Olympiad, a Grecian epoch; the space of four years.

Omissio eorum quæ tacite insunt nihil operatur. 2 Buls. 131.—(The omission of those things which are silently understood is of no consequence.)

Omittance, forbearance.

Omne actum ab intentione agentis est judicandum. A voluntate procedit causa vitii atque virtutis. Jur. Civ.—(Every act is to be estimated by the intention of the doer. The cause of vice and virtue proceeds from the will.)

Omne crimen ebrietas et incendit et detegit. Co. Litt. 247.—(Drunkenness both kindles and uncovers every crime.)

Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo. Dig. 1, 3, 40.—(Every right is either made by consent, or is constituted by necessity, or is established by custom.)

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Co. Litt. 355.—(Everything more worthy draws to it the less worthy, although the less worthy be the more ancient.)

Omne magnum exemplum habet aliquid ex iniquo, quod publicâ utilitate compensatur. Hob. 279.—(Every great example has some portion of evil, which is compensated by the public utility.)

Omne majus continet in se minus, minus in se complectitur. Jenk. Cent. 208.—(The greater contains or embraces the less.)

Omne majus dignum continet in se minus dignum. Co. Litt. 43.—(The more worthy contains in itself the less worthy.)

Omne quod solo inædificatur solo cedit. Dig. 47, 3, 1.—(Everything which is built upon the soil belongs to the soil.)

Omnes licentiam habent his, quæ pro se introducta sunt, renunciare. Broom's Leg. Max., 6th ed., 656.—(Every one has a right to renounce those things which have been granted for his own benefit.)

Omne testamentum morte consummatum est. 3 Co. 29.—(Every will is completed by death.)

Omne sorores sunt quasi unus hæres de unâ hæreditate. Co. Litt. 67.—(All sisters are, as it were, one heir to one inheritance.) See COPARCENERS.

Omni exceptione majus. 4 Inst. 262.—(Above all exception.)

Omnia delicta in aperto leviora sunt. 8 Co. 127.—(All crimes done openly are lighter.)

Omnia præsumuntur solemniter esse acta. Co. Litt. 6.—(All things are presumed to have been done rightly.)

Omnia præsumuntur contra spoliatorem.—(All things are presumed against a wrong doer.) See *Broom's Leg. Max.*, 6th ed., 892.

Omnia præsumuntur legitimè facta donec probetur in contrarium. Co. Litt. 232.—(All things are presumed legitimately done, until it be proved contrariwise.)

Omnia præsumuntur ritè et solemniter esse acta donec probetur in contrarium. Co. Litt. 232.—(All things are presumed to have been rightly and duly performed until it is proved to the contrary.)

Omnia quæ jure contrahuntur contrario jure pereunt.—(All things which are contracted by law perish by a contrary law.)

Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor potestatem sui, sed vir. Co. Litt. 112.—(All things which belong to the wife belong to the husband; the wife has not power over herself, but the husband.) But see HUSBAND AND WIFE.

Omnia ritè acta præsumuntur. Broom's Leg. Max., 6th ed., 902.—(All things are presumed to have been rightly done.)

Omnibus, a vehicle *for all.* By the Town Police Clauses Act, 1889, 52 & 53 Vict. c. 47, bye-laws may be made under the Town Police Clauses Act, 1847 (see that title), for regulation of omnibuses, which term includes for the purposes of the Act, *char à bancs*, waggonettes, brakes, stage-coaches, and other carriages plying or standing for hire by, or used to, carry passengers at separate fares.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Co. Litt. 226.—(Every conclusion of a good

and true judgment arises from good and true premises, and the words of the jury.)

Omnis consensus tollit errorem. 2 Inst. 123.—(Every assent removes error.)

Omnis innovatio plus novitate perturbat quam utilitate prodest. 2 Bulstr. 338.—(Every innovation occasions more harm by its novelty than benefit by its utility.) See *Broom's Leg. Max.*, 6th ed., 141.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Jenk. Cent. 96.—(Every interpretation, if it can be done, is to be so made in instruments, that all contradictions may be removed.)

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis. 2 Inst. 95.—(Every new enactment should affect future, not past times.)

Omnis querela et omnis actio injuriarum limita est infra certa tempora. Co. Litt. 114 b.—(Every plaint, and every action for injuries, is limited within certain times.) See LIMITATION OF SUITS.

Omnis ratihabitio retro-trahitur et mandato priori æquiparatur. Co. Litt. 207.—(Every consent given to what has been already done has a retrospective effect, and is equivalent to a previous request.) See *Broom's Leg. Max.*, 6th ed., 713, 822.

Omnium, the aggregate of certain portions of different stocks in the public funds.—*Com. term.*

Omnium contributione sarciatur quod pro omnibus datum est. 4 Bing. 121.—(That which is given for all is recompensed by the contribution of all.) A principle of the law of general average.

Oncunne, accused.—*Du Cange.*

One hundred thousand pounds clause, a precautionary stipulation inserted in a deed making a good tenant to the *præcipe* in a common recovery. See 1 *Prest. Conv.* 110.

Onerando pro ratâ portionis, a writ that lay for a joint-tenant, or tenant-in-common, who was distrained for more rent than his proportion of the land came to.—*Reg. Orig.* 182.

Onerari non debet (*he ought not to be burdened*), a form of commencement of a pleading, substituted in some few cases for *actionem non*. But see 1 *Saund.* 290 n. *b*.

Onerous cause, a good and legal consideration.—*Scotch term.*

O. Ni. It was the course of the Exchequer, as soon as the sheriff entered into and made up his account for issues, amerciaments, etc., to mark upon each head *O. Ni.*; which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravaile* became debtors to the sheriff, and were discharged against the king, etc.—4 *Inst.* 116.

Onus episcopale, ancient customary payments from the clergy to their diocesan bishop, of synods, pentecostals, etc.

Onus importandi, the charge of importing merchandise, mentioned in 12 Car. II. c. 28.

Onus probandi, the burden of proof. See BURDEN OF PROOF.

Open contract, a contract of which the terms are not all expressly mentioned, as a contract to sell land without mentioning the day for completion of the purchase, or without stipulations as to title or otherwise.

Open Court. A court to which all the public have access as a matter of right. By statute the place where justices summarily convict in an open Court (11 & 12 Vict. c. 43, s. 12), but not so the place where they commit a prisoner for trial at assizes or sessions, 11 & 12 Vict. c. 42, s. 19). Whether a coroner's court is an open court is a matter of doubt, but the general rule is that all courts of justice are open to all so long as there is room.

Opening biddings. Before 1867, where estates were sold, under the decree of a Court of Equity, the Court considered itself to have a greater power over the contract than if the contract were made between party and party; and as the aim of the Court was to obtain as great a price as possible for the estate, it would open the biddings after the estate was sold, and put up the estate for sale again.

But the 'Sale of Land by Auction Act,' 1867, 30 & 31 Vict. c. 48, has, by s. 7, abolished this inconvenient practice (under which biddings were opened even more than once), with an exception for cases of fraud or improper management of a sale, in which, upon the application of any person interested in the land, 'the Court may either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold.'

Opening the case. On a trial before a jury the party who upholds the affirmative of the issue begins, in conformity with the civil law maxim: *Ei incumbit probatio, qui dicit, non qui negat; cum, per rerum naturam, factum negantis probatio nulla sit.*—*Cod.* 4. See RIGHT TO BEGIN.

Opening the pleadings, stating briefly at a trial before a jury the substance of the pleadings. This is done by the junior counsel for the plaintiff at the commencement of the trial.

Open law [*lex manifesta*, Lat.], the making or waging of law.—*Magna Charta*, c. 21.

Open policy, one in which the value of the

ship or goods insured is to be ascertained in case of loss.

Open space. By the Open Spaces Acts of 1877 and 1881, the Metropolitan Board of Works (replaced by the London County Council, under s. 40, subs. 8, of the Local Government Act, 1888), had power to acquire and to hold for the use of the public any open spaces within the metropolis. These Acts were extended, with amendments, to urban sanitary districts, and, with the consent of the Local Government Board, to rural sanitary districts, by the Open Spaces Act of 1887; and the Open Spaces Act, 1890, 53 & 54 Vict. c. 15, empowered the trustees of land held upon trust for the purposes of public recreation to transfer it to the local authorities of their districts for those purposes.

Open theft [*open theof*, Sax.], a theft that is manifest.—*Reg. Hen. I.* c. 13.

Opentide, the time after corn is carried out of the fields.—*Brit.*

Operarii, such tenants under feudal tenures, as held some little portions of land by the duty of performing bodily labour and servile works for their lord.

Operatio, one day's work performed by a tenant for his lord.

Opetide, the ancient time of marriage, from Epiphany to Ash-Wednesday.

Opinio est duplex: scilicet, opinio vulgaris, orta inter graves et discretos, et quæ vultum veritatis habet: et opinio tantum orta inter leves et vulgares homines, absque specie veritatis. 4 Co. 107.—(Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth; and opinion which springs up only among light and foolish men without the semblance of truth.)

Oportet quod certæ personæ, terræ, et certi status, comprehendantur in declarationes usuum. 9 Co. 9.—(It is right that given persons, lands, and estates should be comprehended in a declaration of uses.)

Oportet quod certa res deducatur in judicium. Jenk. Cent. 84.—(A thing certain must be brought to judgment.)

Opposer, an officer formerly belonging to the Green-wax in the Exchequer. Abolished.

Opposita juxta se posita magis elucescunt. Bacon.—(Things opposite are more conspicuous when placed together.)

Opposite, an old word for opponent.

Oppression, the trampling upon or bearing down a person, under pretence of law.

Optima est legis interpres consuetudo. Lofft. 237; Dig. 1, 3, 37.—(Custom is the best interpreter of the law.) Consult *Broom's Leg. Max.*, 6th. ed., 884.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi. Bac. Aphor. 46.—(That system of law is best which confides as little as possible to the discretion of a judge; that judge the best who relies as little as possible on his own opinion.) See *Broom's Leg. Max.*, 6th ed., 78.

Optimus statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. 8 Co. 117.—(The best interpreter of a statute is [all the separate parts being considered] the statute itself.)

Optimacy, nobility; men of the highest rank.

Optimus interpres rerum usus. 2 Inst. 282.—(Custom is the best interpreter of things.) See *Broom's Leg. Max.*, 6th ed., 871, 878.

Optimus interpretandi modus est sic leges interpretari ut leges legibus concordant. 8 Co. 169.—(The best mode of interpretation is so to interpret laws that they may accord with each other.)

Optimus legum interpres consuetudo. 4 Inst. 75.—(Custom is the best interpreter of the laws.)

Option. (1) When a new suffragan bishop is consecrated by the archbishop of the province, by a customary prerogative, the archbishop claims the collation of the first vacant dignity or benefice in that see, at his own choice, i.e., option.—*Cowel.* Options are now disused. (2) The word is also used on the stock exchange to express a right to effect a certain dealing or not at a certain date, at the option of the person bargaining, who pays a premium for the right. See *Fenn on the Funds* (ed. 1869), p. 135.

Optional writ, a *præcipe*, so called because it was in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it.

Or [Fr.], gold, called *sol* by some heralds when it occurs in the arms of princes, and *topaz* or *carbuncle* when borne by peers. Engravers represent it by an indefinite number of small points.—*Heraldic term.*

Ora, a Saxon coin, valued at sixteen pence, and sometimes at twenty pence.—*Domesday.*

Oraculum, a decision by a Roman emperor.

Oral, delivered by the mouth; not written.

Oral pleading, pleadings by word of mouth in presence of the judges. This was the original mode of pleading; it was, however, except in criminal cases, superseded by written pleadings in the reign of Edward III.

Orando pro rege et regno, an ancient writ which issued, while there was no standing collect for a sitting parliament, to pray for the peace and good government of the realm.

Orangemen, a party in Ireland who keep alive the views of William of Orange.

Oratio obliqua. See OBLIQUA ORATIO.

Orator, a petitioner; a plaintiff in a bill, or information, in Chancery was formerly so called.

Oratrix, or **Oratress,** a female petitioner; a female plaintiff in a bill in Chancery was formerly so called.

Orbation, privation of parents or children; poverty.

Orchards. See GARDENS.

Ordeal [fr. *ordal*, Sax., from *or*, great, and *dele*, judgment], an ancient manner of trial in criminal cases practised amongst our Saxon ancestors, who affected to believe that God would actively interpose to establish an earthly right. There were four sorts: (1) campfight, *duellum*, or combat; (2) fire ordeal; (3) hot water ordeal; (4) cold water ordeal. See *Verstegan's Restitution of Decayed Intelligence*, 64; *Turner's Ang.-Sax.*, vol. ii., 532; 2 *Hallam's Mid. Ages*, 466. They are all abolished.

Ordeffe, or **Ordelfe,** a liberty whereby a man claims the ore found in his own land; also, the ore lying under land.—*Cowel.*

Ordels, the right of administering oaths and adjudging trials by ordeal within a precinct or liberty.—*Cowel.*

Order, mandate, precept, command: also a class or rank.

General Orders are promulgated by courts for the proper regulation of their own proceedings, as the Consolidated 'Rules of the Supreme Court, 1883,' which are divided into orders, and subdivided into rules; and *particular* orders are made to enforce a payment of money, to enforce obedience to justice, and compel that which is right to be performed.

Order and disposition of goods and chattels; when goods are in the order and disposition of a bankrupt, they go to his trustee, and have gone so since the time of James I. See BILL OF SALE, and Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 44, and REPUTED OWNER.

Order of discharge, an order made under the Bankruptcy Act, 1883, s. 28, by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands, provable under the bankruptcy, except Crown debts, and debts incurred by fraud (s. 30).

Order of revivor, an order as of course for the continuance of an abated suit. It superseded the bill of revivor. See 15 & 16 Vict. c. 86, s. 52, and Cons. Ord. 1860, XXXII., r. 1, and title ABATEMENT.

Ordering witnesses out of Court. See WITNESSES.

Orders of the clergy. See HOLY ORDERS.

Ordinance, law, rule, prescript.

Ordinance of the forest, a statute made touching matters and causes of the forest.—33 & 34 *Edw. I.*

Ordinance of Parliament, Act of Parliament during the Commonwealth.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputationem. Co. Litt. 96.—(The ordinary is so called because he has an ordinary jurisdiction in his own right, and not a deputed one.)

Ordinandi lex, the law of procedure as distinguished from the substantial part of the law.

Ordinary, a judge who has authority to take cognizance of causes in his own right, and not by deputation.—*Civ. Law.*

By the Common Law, one who has exempt and immediate jurisdiction in causes ecclesiastical.

Also, a bishop; and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also, a commissary or official of a bishop or other ecclesiastical judge having judicial power; an archdeacon: officer of the royal household.

Ordinary of assize and sessions, a deputy of the bishop of the diocese, anciently appointed to give malefactors their neck-verses, and judge whether they read or not; also, to perform divine services for them, and assist in preparing them for death. See NECK-VERSE.

Ordinary conveyances, those deeds of transfer which are entered into between two or more persons, without an assurance in a superior Court of justice. See DEED.

Ordinary of Newgate, the clergyman who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behaviour of such persons. Formerly, it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal.

Ordinatio Forestæ, 33 Edw. I. stat. 5; 34 Edw. I. stat. 5.—2 *Reeves*, c. ix., 104, 106.

Ordinatio pro statu Hiberniæ, 17 Edw. I.—2 *Reeves*, c. ix. 99.

Ordination, the conferring holy orders. The first thing necessary, on application for holy orders, is the possession of a title, that is, a sort of assurance from a rector to the bishop, that, provided the latter finds the person fit to be ordained, the former will take him for his curate, with a stated salary. The candidate is then examined by the bishop or his chaplain respecting both his faith and his erudition; and various certificates are neces-

sary, particularly one signed by the clergyman of the parish in which he has resided during a given time. The candidate has to comply with the requirements of the Clerical Subscription Act, 1865, 28 & 29 Vict. c. 122 (see CLERGY); and a clerk must have attained his twenty-third year before he can be ordained a deacon; and his twenty-fourth to receive priest's orders.—44 *Geo. III.* c. 43. The ceremony of ordination is performed by the bishop, by the imposition of hands on the person to be ordained. In the English church, and in most Protestant countries where the church is connected with the state, ordination is a requisite to preaching; but, in some sects, ordination is not considered necessary for that purpose, although it is considered proper, previously to the administration of the sacraments.

In the Presbyterian and Congregational churches, ordination means the act of establishing a licensed preacher over a congregation with pastoral charge and authority, or the act of conferring on a man the powers of a settled minister of the gospel, without the charge of a particular church, but with general powers whenever he may be called upon to officiate.

Ordinatione contra servientes, a writ that lay against a servant for leaving his master, contrary to the ordinance of statute 23 & 24 Edw. III.—*Reg. Orig.* 189.

Ordine placitandi servato, servatur et jus. Co. Litt. 303 a.—(The order of pleading being preserved, right is preserved.)

Ordines, a general chapter or other solemn convention of the religious of a particular order.

Ordines majores et minores, the holy orders of priest, deacon, and sub-deacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure, were called *ordines majores*; and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte, were called *ordines minores*; persons ordained to the *ordines minores* had their *prima tonsura* different from the *tonsura clericalis.*—*Cowel.*

Ordinum fugitivi, those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations.—*Par. Antiq.* 388.

Ordnance debentures, bills which were issued by the Board of Ordnance on the Treasurer of that office for the payment of stores, etc.

Ordnance Office, or **Board of Ordnance,** an office which was kept within the Tower of London, and which superintended and disposed of all the arms, instruments, and utensils of war, both by sea and land, in all the magazines, garrisons, and forts of Great Britain. It is divided into two distinct branches, the civil and the military.—4 & 5 *Wm. IV.* c. 24. But by 18 & 19 Vict. c. 117, the powers, duties, etc., of the Board, were transferred to the Secretary of State for War.

Ordnance survey. This 'survey of Great Britain and the Isle of Man' was first authorised in 1841 by 4 & 5 Vict. c. 30, an Act which expired in 1846, but has been continued with its amending Acts, 33 Vict. c. 13, and 47 & 48 Vict. c. 43, from time to time, and, lastly, until December, 1892.

For statutory determination of distance by ordnance map see Municipal Corporations Act, 1882, s. 231, and for definition of 'ordnance map' see Interpretation Act, 1889, s. 25.

Ordo, that rule which monks were obliged to observe.

Ordo Albus, the white friars or Augustines; the Cistercians also wore white.

Ordo Niger, the black friars. The Cluniacs likewise wore black.

Ore tenus (*by word of mouth*).

Orfgild [fr. *orf*, Sax., cattle, and *gild*, recompense], a delivery or restitution of cattle. But Lambarde says it is a restitution made by the hundred or county for any wrong done by one who was in pledge, or rather a penalty for taking away cattle.—*Lamb. Arch.* 125.

Orgild, without recompense; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain.—*Spelm.*

Orige. See ORWIGE.

Original bills in equity. See BILL IN CHANCERY.

Original charter, is one by which the first grant of land is made. On the other hand, a charter by progress is one renewing the grant in favour of the heir or singular successor of the first or succeeding vassals.—*Bell's Scotch Law Dict.*

Original and derivative estates. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. —*Prest. on Est.* 125.

Original writ, or **Original** (*breve originale*, Lat.), was the beginning or foundation of a real action at Common Law. It is also applied to processes for some other purposes.

It was a mandatory letter issuing out of the Common Law or ordinary jurisdiction of the Court of Chancery (see now CHANCERY), under the Great Seal, and in the sovereign's name, addressed to the sheriff of the county

where the injury was committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim, and, on his failure to comply, then to summon him to appear in one of the superior courts of Common Law. In some cases it simply required the sheriff to enforce the appearance. Original writs differed from each other in their tenor, according to the nature of the plaintiff's complaint, and were conceived in fixed and certain forms. Many of these are of a remote antiquity; others are of later origin, and their history is as follows:—The ancient writs had provided for the most obvious kinds of wrong; but, in the progress of society, cases of injury arose new in their circumstances, so as not to be reached by any of the writs then known in practice; and it seems that either the clerks of the Chancery (who prepared the original writ) had no authority to devise new forms for such cases, or they were remiss in its exercise. Therefore, by the statute of West. 2, 13 Edw. I. c. 24, it was provided, 'That as often as it shall happen in the Chancery that in one case a writ is found, and in a like case, falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the Chancery shall agree in making a writ or adjourn the complaint till the next Parliament, and write the case in which they cannot agree, and refer them to the next Parliament,' etc.—*Steph. on Plead. app.* n. 2.

The following original writs were issued, not *ex debito justitiæ* but *ex merâ gratiâ*, and were sometimes denominated discretionary writs; *De ventre inspiciendo; supplicavit; certiorari;* prohibition; writs of error in criminal cases; *ad quod damnum; scire facias*, to repeal letters-patent, etc. See 1 *Mad. Eq.* b. 8.

As to the mode of commencing actions in the Supreme Court, see ACTION and SUMMONS.

Originalia, transcripts sent to the Remembrancer's Office in the Exchequer out of the Chancery, distinguished from *recorda*, which contain the judgments and pleadings in actions tried before the barons.

Originating Summons, a summons without writ, returnable in the chambers of a judge of the Chancery Division, for the determination of particular questions arising in the administration of an estate or trust, without the administration of the whole estate or trust. The summons may be taken out by any person interested, and is served on the persons whose rights are sought to be affected. This procedure was first established in 1883 by R. S. C. 1883, Ord. LV.

Origine propriâ neminem posse voluntate suâ eximi manifestum est. Cod. 10, 38, 4.—(It is evident that no one is able, of his own pleasure, to do away with his proper origin.) For the application of this maxim, see *Broom's Legal Maxims.*

Ornamental grounds. The Act 26 & 27 Vict. c. 13, provides for the protection of gardens and ornamental grounds in cities and boroughs. See GARDENS.

Ornest, the trial by battle, which does not seem to have been used in England before the time of the Conqueror, though originating in the kingdoms of the north, where it was practised under the name of *holmgang*, from the custom of fighting duels on a small island or *holm.*—*Anc. Inst. Eng.*

Orphan, a fatherless child or minor, or one deprived of both father and mother.

The Lord Chancellor is the general guardian of all orphans and minors throughout the realm.

In London the Lord Mayor and Aldermen have in their court of orphans the custody of the orphans of deceased freemen, and also the keeping of their lands and goods; accordingly the executors and administrators of freemen leaving such orphans, are to exhibit inventories of the estate of the deceased, and give security to the Chamberlain for the orphan's part or share.

Orphanotrophi, managers of houses for orphans.—*Civ. Law.*

Ortelli, the claws of a dog's foot.—*Kitch.*

Ortelagium, a garden plot or hortilage.

Orwige—sine wita, without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *fæhth*, or deadly feud, on the part of the family of the slain.—*Anc. Inst. Eng.*

Ostensio, a tax anciently paid by merchants, etc., for leave to show or expose their goods for sale in markets.—*Du Cange; Anc. Inst. Eng.*

Ostium ecclesiæ, Dower ad. See AD OSTIUM ECCLESIÆ.

Oswald's Law, the law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald, Bishop of Worcester, about A.D. 964.

Oswald's Law Hundred, an ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar to be given to St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction, and comprehends 300 hides of land.—*Camd. Brit.*

Ourlop, the lierwite or fine paid to the lord by the inferior tenant when his daughter was debauched.—*Cowel.*

Oust (*v.a.*), to dispossess.

Ouster, dispossession.

A wrong or injury that may be sustained in

respect of hereditaments, corporeal or incorporeal, carrying with it the deprivation of possession; for thereby the wrongdoer gets into the actual occupation of the land or hereditament, and obliges him that has a right, to seek his legal remedy, in order to gain possession and damages for the injury sustained. Such dispossession may be either of the freehold or of chattels real.

Ouster of the freehold is effected by various methods: 1st, abatement; 2nd, intrusion; 3rd, disseisin; 4th, deforcement; and 5th, discontinuance.

Ouster of chattels real consists: 1st, of amotion of possession from estates held by statute, recognizance, or *elegit*, which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined, by raising the sum for which it is given to him in pledge; and 2nd, of amotion of possession from an estate of years, which also takes place by a like kind of disseisin ejection, or turning out of the tenant from the occupation of the land during the continuance of his term.

For remedies for ouster, see EJECTMENT, and FORCIBLE ENTRY.

Ousterlemain [*amovere manum*, Lat.], the delivery of the lands out of the guardian's hands, upon the male heir attaining twenty-one, or the female heiress sixteen years of age. Abolished by 12 Car. II. c. 24.

Also, a livery of land out of the sovereign's hands on a judgment given for him that sued out a *monstrans de droit*.—*Staunf. Prærog.* c. 24.

Ouster le mer, beyond the sea; a cause of excuse, if a person, being summoned, did not appear in Court.—*Cowel.* See SEAS, BEYOND.

Outer House, the name given to the great hall of the Parliament House in Edinburgh, in which the Lords Ordinary of the Court of Session sit as single judges to hear causes. The term is used colloquially as expressive of the business done there in contradistinction to the Inner House, the name given to the chambers in which the First and Second Divisions of the Court of Session had their sittings.—*Bell's Scotch Law Dict.* See SESSION, COURT OF.

Out of Court, deprived of all right to have one's case so much as considered by the Court. A plaintiff in an action at Common Law must have declared within one year after the service of a writ of summons, otherwise he was out of court, unless the Court had, by special order, enlarged the time for declaring.

Outfangthef, a liberty in the ancient Common Law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court.—*Du Cange.*

Outhest, or **Outhom**, a calling men out to the army by sound of horn.—*Jacob.*

Outhouses, buildings belonging to and adjoining dwelling houses.

Outland, land lying beyond the demesnes, and granted out to tenants at the will of the lord, like copyholds. Subdivided into *theodans*, or lesser thanes, disposed amongst those who attended the lord, and those parts allotted to their husbandmen or churls.—*Spelm.*

Outlaw [fr. *utlaghe*, Sax.; *utlagatus*, Lat.], a person put out of the law, or deprived of its benefits (see next title).

Outlawry [fr. *utlagaria*, Lat.], the being put out of the law for contempt in wilfully avoiding the execution of the process of the Queen's Court. Outlawry has long been obsolete in civil proceedings, and is formally abolished by the Civil Procedure Acts Repeal Act, 1879, 42 & 43 Vict. c. 59, in civil proceedings. In criminal proceedings it is but little used, but is formally kept alive by 33 & 34 Vict. c. 23, which Act while abolishing forfeiture for felony, expressly provides that nothing therein shall affect the law of forfeiture consequent on outlawry.

The maxim applicable to outlaws is, 'Let them be answerable to all, and none to them.' Accordingly, any person outlawed is *civiliter mortuus*. He can hold no property given or devised to him; and all the property which he held before is forfeited. He can neither sue on his contracts, nor has he any legal rights which can be enforced; while, at the same time, he is personally liable upon all causes of action. He can, however, bring actions *in autre droit*, as executor, administrator, etc., because in such actions he only represents persons capable of contracting, and under the protection of the law.—*Ex parte Franks*, 7 *Bing.* 767.

Outparters, stealers of cattle.—*Cowel.*

Outputers, such as set watches for the robbing any manor-house.—*Cowel.*

Outriders, bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or hundreds to summon men to the county or hundred court.

Outstanding term, a term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication. See 8 & 9 Vict. c. 112.

Outsucken multures, quantities of corn paid by persons voluntarily grinding corn at any mill to which they are not thirled or bound by tenure. See INSUCKEN MULTURES.

Ovelty, a kind of equality of service in subordinate tenures.—*F. N. B.* 36.

Overcyted, or **Overcyhsed**, proved guilty or convicted.—*Blount.*

Overdue, past the time of payment.

When bills of exchange are indorsed after they are overdue, the indorsee is liable to suspicion; and it behoves him to use every precaution, and make every inquiry, for he takes the bill with all its faults on the credit of the indorser, and must stand in the same situation as the holder when the bill first becomes payable. This rule, however, does not apply to cheques.—9 *B. & C.* 388. Consult *Byles on Bills.*

Overhernissa, contumacy or contempt of court.—*Leg. Æthel.* c. 25.

Overrule, to set aside the authority of a former decision.

Oversamessa, a forfeiture for contempt or neglect in not pursuing a malefactor.—3 *Inst.* 116.

Overseers of the Poor, public officers created by the 43 Eliz. c. 2, to provide for the poor of every parish. There are two or more, according to the extent of the parish. Churchwardens are, by this statute, overseers of the poor, and they join with the overseers in making poor rates; but the churchwardens, having distinct business of their own, usually leave the care of the poor to the overseers, though anciently they were the sole overseers of the poor.—*Wood's Inst.* 98. The overseers are charged with the duty of preparing the lists of Parliamentary and Municipal voters under the Parliamentary and Municipal Registration Act. See REGISTRATION.

Assistant overseers may be appointed with a salary, by 59 Geo. III. c. 12, s. 7. See *Burn's Justice*, tit. '*Poor.*'

Oversewenesse. See OVERHERNISSA.

Oversman, an umpire.—*Scotch term.*

Overt, open. See next title.

Overt act, an open act by law must be manifestly proved.—3 *Inst.* 12.

Overt word, an open, plain word, not to be misunderstood.—*Cowel.*

Overture, an opening; a proposal.

Ovrages, or **Ouvrages**, day's work.

Ovres, acts, deeds, or works.—8 *Rep.* 131.

Owel, equal.

Owelty, equality.—*Co. Litt.* 169.

Owlers, persons who carried wool, etc., to the seaside by night, in order that it might be shipped off contrary to law.—*Jacob.*

Owling, the offence of transporting wool or sheep out of the kingdom. Abolished by 5 Geo. IV. c. 107.

Oxfild, a restitution anciently made by a hundred or county for any wrong done by one that was within the same.—*Lamb Arch.* 125.

Oxford. See UNIVERSITY.

Oxgang, or **Oxgate**, fifteen acres of land. Corrupted, in the north, to *oxken.*—*Kelm, Domes. Illustr.*

Oyer (*to hear*), the ancient word for assizes; oyer of a deed is abolished by C. L. P. Act, 1852, s. 55.

Oyer de record, a petition made in court that the judges, for better proof's sake, will hear or look upon any record.—*Cowel.*

Oyer and terminer, a commission directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to *hear* and *determine* treasons, and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner.*

When any sudden insurrection takes place, or any public outrage is committed which requires speedy reformation, or there is a press of business, then a special commission is immediately granted.

Oyer and Terminer, Courts of, and general gaol delivery. See ASSIZES.

Oyez (*hear ye*), the introduction to any proclamation or advertisement given by the public criers both in England and Scotland. It is pronounced, *oh! yes!* See NORMAN FRENCH.

Oysters. As to punishment for stealing oysters, see 24 & 25 Vict. c. 26, s. 26. The 29 & 30 Vict. c. 85, was passed to facilitate the establishment, improvement, and maintenance of oyster and mussel fisheries in Great Britain. See also 32 & 33 Vict. c. 26.

P.

Paage [Old Fr., fr. *paagium*, low Lat.], a toll for passage through another's land. Obsolete.

Pacare, to pay.

Pacatio, payment.—*Mat. Par.* A.D., 1248.

Pace, a measure of length containing two feet and a half. The geometrical pace is five feet long; the common pace is the length of a step, the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

Paceatur (*let him be freed or discharged*).

Paci sunt maximè contraria vis et injuria. Co. Litt. 161.—(Violence and injury are the things chiefly hostile to peace.)

Pacific Ocean (Islands in). See 35 & 36 Vict. c. 19, and 38 & 39 Vict. c. 51.

Pack of wool, a horse load, which consists of 17 stone and two pounds, or 240 pounds weight.—*Fleta, I.* lib. 2, c. xii.; *Cowel.*

Package, scavage, bailage, and **portage**, duties charged in the port of London on the goods imported and exported by aliens, or by denizens being the sons of aliens.

The Act 3 & 4 Wm. IV. c. 66, authorised the Lords of the Treasury to purchase these duties from the city. This was done at an expense of about 140,000*l.*, and the duties were abolished.—*McCull. Com. Dict.*

Packed parcels, the name for a consignment of goods, consisting of one large parcel made up of several small ones (each bearing a different address) collected from different persons by the immediate consignor (a carrier), who unites them into one for his own profit at the expense of the railway by which they are sent, since the railway company would have been paid more for the carriage of the parcels singly than together. The charging by a railway company of a higher rate for 'packed' than other parcels has been determined frequently to be illegal; see *G. W. Ry. Co.* v. *Sutton, L. R.* 4 *H. L.* 226.

Packing. As to false packing of hay and straw in the metropolis see 19 & 20 Vict. c. 114, which inflicts a penalty of 10*l.*

Pact [fr. *pacte*, Fr.; *pactum*, Lat.], a contract, bargain, covenant.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omnimodo observanda sunt. Dig. 2, 14, 27, s. 4.—(Agreements which are neither illegal nor founded on fraud must in all respects be observed.)

Pacta dant legem contractui. Hob. 118.—(The stipulations of parties constitute the law of the contract.)

Pacta privata juri publico derogare non possunt. 7 Co. 23.—(Private compacts cannot derogate from public right.)

Pacta quæ contra leges constitutiones que vel contra bonos mores fiunt nullam vim habere, indubitati juris est.—(It is undoubted law that agreements have no force which are contrary to law or the constitutions, or to good morals.)

Pacta quæ turpem causam continent non sunt observanda. Dig. 2, 14, 27, s. 4.—(Agreements founded on an immoral consideration are not to be observed.)

Paction [fr. *pactio*, Lat.], a bargain or covenant.

Pactis privatorum juri publico non derogatur.—(Private contracts cannot derogate from public right.)

Pacto aliquod licitum est, quod sine pacto non admittitur. Co. Litt. 166.—(By special agreement things are allowed which are not otherwise permitted.)

Pactum constitutæ pecuniæ, an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or an agreement by which a person promises to pay a creditor.—*Civ. Law.*

Pactum de non petendo, an agreement made between a creditor and his debtor that the former will not demand from the latter the debt due. By this agreement the debtor is freed from his obligation.—*Civ. Law.* This is not unlike the *covenant not to sue* of our Common Law.

Pactum de quotâ litis, an agreement by which a creditor promised to pay a portion of a debt difficult to recover, to a person who undertook to recover it.—*Civ. Law.*

Padder, a robber, a foot highwayman.

Paddock [fr. *panne*, Sax., a park], a small inclosure for deer or other animals.

Pagan [fr. *pagus*, Lat., village]. 'Religion did first take place in cities, and in that respect was a cause why the name of *Pagans*, which properly signifieth a country people, came to be used in common speech for the same that infidels and unbelievers were.'—*Hooker, E. P.* v. 80.

Pagarchus [fr. *pagus*, Lat., village, and ἀρχή, Gk., command], a petty magistrate of a *pagus* or little district in the country.

Pagoda, a temple; also a gold coin in the south of India valued at 8*s.*—*Indian.*

Pagus, a county.—*Jacob.*

Pains and Penalties, Acts of Parliament to attaint particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the Common Law, to serve a special purpose. They are in fact new laws, made *pro re natâ.* It is an incident of such bills that persons who are to be affected by them are entitled by custom to be heard at the bar of the House in person or by counsel. But on a bill to disfranchise the borough of St. Albans, this claim was disallowed.

Paintings, as to the copyright in, see 25 & 26 Vict. c. 68; and see COPYRIGHT.

Pairing-off, a practice which is said to have originated in the time of Cromwell, whereby two members of the House of Commons, or other deliberative assembly, of opposite opinions, agree to absent themselves from voting on a particular division or during a given period.

Pais, or **Pays,** the people out of whom a jury is taken; a corruption of *pagus.*—*Spelm.*

Pais, Conveyances in, ordinary conveyances between two or more persons *in the country,* i.e., upon the land to be transferred.

Pais, Estoppel in. See ESTOPPEL.

Pais, Trial by, a trial by the country, i.e., a jury.—3 *Steph. Com.*

Palace Court. An inferior court of the Queen at Westminster. Abolished by 12 & 13 Vict. c. 101. See MARSHALSEA, COURT OF.

Palagium, a duty to lords of manors for exporting and importing vessels of wine at any of their ports.—*Jacob.*

Palatine, possessing royal privileges. See COUNTY PALATINE.

Palfridus, a palfry, a horse to travel on.

Paling-man, a merchant denizen, or one born within the English pale.—*Cowel.*

Pallio cooperire, an ancient custom where children, where born out of wedlock and their parents afterwards intermarried, the children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. The children were legitimate by the Civil, but not by the Common Law.—*Jacob.*

Palmer Act, 19 & 20 Vict. c. 16, enabling a person accused of a crime committed out of the jurisdiction of the Central Criminal Court to be tried in that court, in order to give him a trial free from local prejudice, so-called from the poisoner Palmer of Rugeley, who was tried and found guilty.

Palmer's Act. See HINDE PALMER'S ACT.

Pamphlet [fr. *par un filet*, Fr., by a thread], a small book, usually printed in the octavo form, and stitched.—The Act 10 Anne c. 19, s. 113, as to the printers of pamphlets, was repealed by 33 & 34 Vict. c. 99. See now PRINTERS.

Pandectæ, or **Digesta**. In the last month of the year A.D. 530, Justinian, by a constitution addressed to Tribonian, empowered him to name a commission for the purpose of forming a code out of the writings of those jurists who had enjoyed the *Jus respondendi*, or, as it is expressed by the emperor, '*antiquorum prudentium quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes præbuerunt.*' The compilation, however, comprises extracts from some writers of the republican period.—*Const. Deo. Auctore.* Ten years were allowed for the completion of the work. The instructions of the emperor were, to select what was useful, to omit what was antiquated or superfluous, to avoid unnecessary repetitions, to get rid of contradictions, and to make such other changes as should produce out of the mass of ancient juristical writings a useful and complete body of law (*jus Antiquum*);—the work was to be named *Digesta*, a Latin term indicating an arrangement of materials; or *Pandectæ*, a Greek word expressive of the comprehensiveness of the work. It was also declared that no commentaries should be written on this compilation, but permission was given to make *paratitla*, or references to parallel passages, with a short statement of their contents (*Const. Deo. Auctore*, s. 12). It was also declared that abbreviations (*sigla*) should not be used in forming the text of the Digest. The work was completed in three years (17 *Cal. Jan.* A.D. 533), as appears by a constitution, both in Greek and Latin, which confirmed the work, and gave to it legal authority.—*Smith's Dict. of Antiq.*

The number of writers from whose works extracts were made is thirty-nine.

Justinian's plan embraced two principal works, one of which was to be a selection from the jurists, and the other from the Constitutiones. The first, the Pandects, was very appropriately intended to contain the foundation of the law; it was the first work since the date of the Twelve Tables, which in itself, and without supposing the existence of any other, might serve as a central point of the whole body of the law. It may be properly called a code, and the first complete code since the time of the Twelve Tables, though a large part of its contents is not law, but is dogmatic, or is taken up with the investigation of particular cases. Instead of the insufficient rules of Valentinian III., the excerpts in the Pandects are taken immediately from the writings of the jurists in great numbers, and arranged according to their matter. The code also has a more comprehensive plan than the earlier codes, since it comprises both rescripts and edicts. These two works, the Pandects and the Code, ought properly to be considered as the completion of Justinian's designs. The *Institutiones* cannot be viewed as a third work; independent of both, it serves as an introduction to them, or as a manual. Lastly, the *Novellæ* are single and subsequent additions or alterations, and it is merely an accidental circumstance that a third edition of the code was not made at the end of Justinian's reign, which would have comprised the *Novellæ* that had a permanent application.—*Savigny*, as quoted in *Smith's Dict. of Antiq.*, *voce* '*Pandectæ.*'

The Pandects are divided into fifty Books, each book containing several Titles, divided into Laws, and the Laws generally into several Parts or Paragraphs.

In order to prevent the circulation of incorrect editions, three Ultramontane and three Citramontane scholars were chosen every year in the University of Bologna, and termed PECIARII; they were excused from all other *munera publica*, and held their sessions once a week for the purpose of correcting imperfect copies in possession of circulating libraries; a fine of five soldi was imposed on all possessors of defective books, together with the expenses of correction, for which purpose every doctor or scholar was obliged to lend his own perfect copy, under pain of a fine of five lire; hence the term *exempla correcta et bene emendata.* Books

thus corrected were advertised by the bedel. —1 *Colqu. R. C. L.* 67—73.

Pandoxator, a brewer.—*Old Records.*

Pandoxatrix, a woman that brews and sells ale.—*Cowel.*

Panel [fr. *panellum*, Lat.; *panneau*, Fr., a square or panel], a little part, or rather a schedule or page, containing the names of such jurors as the sheriff returns to pass upon a trial; and empannelling a jury is nothing but the entering them into the sheriff's roll or book.

2. In Scotch law, the accused person in a criminal trial.—*Bell's Scotch Law Dict.*

Pannage [fr. *pannagium*, low Lat.; *panage*, Fr.], food that swine feed on in the woods, as mast of beech, acorns, etc., which some have called *pawnes*. 2. The money taken by the agistors for the food of hogs fed with the mast of the royal forests.—*Cowel.*

Pannagium est pastus porcorum, in nemoribus et in silvis, de glandibus, etc. 1 Buls. 7. —(A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.)

Pannel. See PANEL.

Pannellation, act of empannelling a jury.

Pannier-man, one who called the members in the Inns of Court to dinner, etc., and provided mustard, pepper, and vinegar for the hall; whence those who wait at table at the Inns are called 'panniers.'

Pannus, a garment made with skins.—*Fleta, lib.* 2, c. xiv.

Pantomime, a dramatic performance in which gestures take the place of words. See *Lee* v. *Simpson*, 3 *C. B.* 871.

Paper. As to the paper on which proceedings in the Supreme Court must be printed, see PRINTING PROCEEDINGS IN AN ACTION.

Paper blockade. The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter.

Paper book, the issues in law, etc., upon special pleadings, formerly made up by the clerk of the papers, who was an officer for that purpose, but latterly by the plaintiff's attorney or agent.

Any party who enters an action for trial must deliver to the officer of the Court two copies of the whole of the pleadings, one for the use of the judge at the trial (R. S. C. 1883, Ord. XXXVI., rr. 17, 30).

Paper-credit, credit given on the security of any written obligation purporting to represent property.

Paper-days. In each of the Common Law courts certain days were appointed in each term, called *Special Paper-days*, because the court on those days proposed to hear the cases entered in the Special Paper for argument. There was also fixed in the Queen's Bench, Crown Paper-days for disposing of business on the Crown side of the Court.—On these days no motions were heard. Since the coming into force of the Judicature Acts, arrangements similar to those above mentioned continue to be made.

Paper duty repeal. This was effected by 24 & 25 Vict. c. 20.

Paper money, bank-notes, bills of exchange, and promissory notes.

Paper office (in the palace of Whitehall), an ancient office where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the Queen's ministers abroad, and generally all the papers and dispatches that pass through the offices of the Secretaries of State, are deposited.

Also an office or room in the Court of Queen's Bench where the records belonging to that court are deposited; sometimes called *Paper-mill.*

Papism, popery. See next title.

Papist [fr. *papa*, Lat., a pope], one who adheres to the communion of the Church of Rome. The word seems to be considered by the Roman Catholics themselves as a nickname of reproach, originating in their maintaining the supreme ecclesiastical power of the pope.

By 18 Geo. III. c. 60, 31 Geo. III. c. 32, and 43 Geo. III. c. 30, most of the severer penalties and disabilities to which papists were formerly subject, were removed, on condition of their qualifying by such oath and declaration as in those Acts respectively provided; and by 10 Geo. IV. c. 7, commonly called the Catholic Emancipation Act, Roman Catholics were restored in general to the full enjoyment of all civil rights, except that of holding ecclesiastical offices and certain high appointments in the state. All enactments by which any declaration against transubstantiation, invocation of saints, or the sacrifice of the mass, were required, etc., as qualifications for sitting in Parliament, were repealed; and persons professing the Roman Catholic religion, upon taking and subscribing an oath prescribed by the Act (see now title OATH), were relieved from all disabilities and penalties whatever, and made competent to sit in Parliament, to vote at parliamentary elections, and to be members of lay corporations, and to exercise any franchise or civil right *except* that of presenting to benefices, and the office of guardian, justice, or regent of the United Kingdom; lord high chancellor, or commissioner, or keepers of the Great Seals; lord lieutenant, deputy, or chief governor of Ireland; high commissioner to

the General Assembly of the Church of Scotland; or any office in the church or the ecclesiastical courts, or in the universities, colleges, and public schools.

Doubts having been still entertained as to the right of Roman Catholics to hold property for the support of religious worship, and for educational or charitable purposes, it was provided by the 2 & 3 Wm. IV. c. 115, that they should be subject, in this particular, to the same laws as were applicable to Protestant dissenters; and the 7 & 8 Vict. c. 102, and 9 & 10 Vict. c. 49, repealed all such enactments (although fallen into oblivion) as were calculated to oppress the Roman Catholic subjects of the realm.

'The Ecclesiastical Titles Assumption Act, 1851' (14 & 15 Vict. c. 63), occasioned by and prohibiting the assumption of titles by Roman Catholic Bishops, was never enforced, and has been repealed by 34 & 35 Vict. c. 53.

As to *livings* in the gift of Roman Catholics, the right to present to them is secured to the Universities of Oxford and Cambridge, according to the several counties in which they are situated. See 12 Anne, st. 2, c. 14, s. 4, and 11 Geo. II. c. 17.

Par, state of equality; equal value. See EXCHANGE.

Paracium, the tenure between parceners, viz., that which the youngest owes to the eldest without homage or service.—*Domesday*.

Parage, or **Paragium**, an equality of blood or dignity; but more especially of land, in the partition of an inheritance between coheirs; more properly, however, an equality of condition among nobles, or persons holding by a noble tenure. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage, i.e., without any homage or service.—*Cowel*. Also the portion which a woman may obtain on her marriage.

Paragraph, a part or section of a statute, pleading, affidavit, etc., which contains one article, the sense of which is complete.

Paramount, superior; having the highest jurisdiction, as lord paramount, the supreme lord of the fee; the sovereign.

Paraphernalia [fr. παρά, Gk., beyond; and φερνή, dower], something reserved to a wife over and above her dower or dotal portion. It includes all the personal apparel and ornaments of the wife which she possesses, and which are suitable to her rank and condition of life. At law, before the Married Women's Property Act (see title MARRIED WOMEN'S PROPERTY), the husband, in his lifetime, may dispose of his wife's paraphernalia; excepting, indeed, her necessary apparel; and they were liable to the claims of the husband's creditors, with the like exception. But the wife was entitled to her paraphernalia against his representatives; for the husband could not, by will, dispose of them, or leave them to his representatives. Where the husband, either before or after marriage, gave to his wife articles in the nature of paraphernalia, they were not treated as absolute gifts to her as her own separate property; for if they were, she might dispose of them at any time, and he could not appropriate them to his own use. But they were deemed gifts *sub modo* only, i.e., for the purpose of being worn by the wife as ornaments of her person. But if the like articles were bestowed upon her by her father, or by a relative, or even by a stranger, before or after marriage, they would be deemed absolute gifts to her separate use; and then, if received with the husband's consent, he could not, nor could his creditors, dispose of them, any more than they could of any other property received and held to her separate use. See HUSBAND AND WIFE.

Parasceve, the sixth day of the last week in Lent, particularly called Good Friday. It is a *dies non jurisdicus*.

Parasitus, a domestic servant.—*Blount*.

Parasynexis, a conventicle, or unlawful meeting.—*Civ. Law*.

Paratitla, an abbreviated explanation of some titles or books of the Code or Digest.—*Civ. Law*. See PANDECTÆ.

Paravail [fr. *par*. Fr., and *avayler*, to dismiss], the lowest tenant of a fee; or he who is immediate tenant to one who holds of another.

Parcella terræ (*a parcel of land*).

Parcel, the legal term for a part.

Parcel makers, two officers in the Exchequer who formerly made the parcels of the escheators' accounts, wherein they charged them with everything they had levied for the sovereign's use within the time of their being in office, and delivered the same to the auditors, to make up their accounts therewith.—*Prac. Exch.*

Parcels, a description of property, formally set forth in a conveyance, together with the boundaries thereof, in order to its easy identification.

Parcels, Bill of, an account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

Parcenary, the tenure of lands by parceners.

Parceners. See COPARCENARY.

Parchment, skins of sheep dressed for writing [fr. *pergamena*, Lat.], so called because invented at Pergamus, in Asia Minor, by King Eumenes, when paper, which was in use in Egypt only, was prohibited by Ptolemy

to be transported into Asia. It is used for deeds; and was used for writs of summons previously to November 1, 1875. (See Judicature Act, 1875, Ord. V., r. 5.)

Parco fracto, a writ against him who violently broke a pound, and took away beasts lawfully impounded.—*Reg. Orig.* 166.

Pardon, forgiveness of a crime; remission of punishment.

The pardoning of criminals is the peculiar prerogative of the Sovereign. See 4 *Steph. Com.* 7th ed., 466—477.

The Queen may pardon all offences merely against the Crown and the public, excepting: (1) That to preserve the liberty of the subject, the committing any man to prison out of the realm is, by the Habeas Corpus Act, 31 Car. II. c. 2, made a *præmunire*, unpardonable even by the Crown; nor (2) can the Queen pardon where private justice is principally concerned in the prosecution of offenders '*non potest rex gratiam facere cum injuriâ et damno aliorum.*' Therefore she cannot pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it; though afterwards she may remit the fine. Neither can the Queen pardon an offence against a popular or penal statute after information brought; for thereby the informer has acquired a private property in his part of the penalty. But the 22 Vict. c. 32, enables the Crown to remit penalties for offences, although payable to parties other than the Crown; and a special power of a similar character, limited to offences against the Sunday Observance Act of George the Third, 21 Geo. III. c. 29, is conferred by the Remission of Penalties Act, 1875, 38 & 39 Vict. c. 80. By 12 & 13 Wm. III. c. 2, no pardon under the Great Seal of England is pleadable to an impeachment by the Commons in Parliament. But after the impeachment has been solemnly heard and determined, the prerogative of pardon may be extended to the person impeached.

As to the manner of pardoning, it is enacted by 7 & 8 Geo. IV. c. 28, s. 13, that where the King's majesty shall be pleased to extend his royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under his royal sign-manual, countersigned by a secretary of state, shall grant to such offender either a free or conditional pardon, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender as to the felony for which such pardon shall be granted. By 9 Geo. IV. c. 32, s. 3 (reciting that it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged), where any offender shall be convicted of any felony not punishable with death, and shall endure the punishment adjudged, the punishment shall have the like consequences as a pardon under the Great Seal, as to the felony whereof the offender was so convicted.

Whenever the Queen has been deceived, the pardon is void. A pardon of all felonies will not pardon a conviction or attainder of felony, but the conviction or attainder must be particularly mentioned; and a pardon of felonies will not include piracy, for that is no felony punishable at the Common Law. A pardon is taken most beneficially for the subject, and most strongly against the sovereign. A pardon may also be conditional, that is, the Queen may extend her mercy upon what terms she pleases, and annex a condition either precedent or subsequent, on the performance whereof the validity of the padron will depend, and this by the Common Law; which prerogative was at one time frequently exercised in the pardon of felons, on condition of being confined to hard labour or of transportation to a foreign country.

A pardon by Act of Parliament is more beneficial than by the Queen's charter; for a man is not bound to plead it, but the Court must take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the Queen's charter of pardon. The Queen's charter of pardon must be pleaded specially, and at a proper time. It may be pleaded in bar as at once destroying the end and purpose of the indictment, by remitting the punishment to which the offender is liable. Pleading a pardon in bar or in arrest of judgment *before* sentence (instead of *after* sentence or attainder), by stopping the judgment, used to stop the attainder, and prevent the corruption of blood which followed in certain cases on conviction, and which could not afterwards be purged except by Act of Parliament. Now, since the 33 & 34 Vict. c. 23, 'no confession, verdict, inquest, conviction, or judgment of or for any treason or felony, or *felo de se*, shall cause any attainder or corruption of blood or any forfeiture or escheat.' But that Act does not affect the law of forfeiture consequent upon outlawry. The 5 & 6 W. & M. c. 13, gives the judges of the court power to bind over the criminal pleading pardon to his good behaviour.

The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures

annexed to the offence pardoned, and not so much to restore his former as to give him new credit and capacity. Nevertheless the judgment remains formally unreversed, and therefore it was proposed by Attorney-General Sir F. Pollock, that when the Crown pardons any adjudged guilty on the ground that the evidence rightly viewed does not warrant the judgment, the prisoner should assign and the Attorney-General should confess error on the record, whereby the judgment would be reversed, and there would remain no record of guilt, which the Crown thinks not proved. This would have been a fiction, for defects in the substance of the evidence do not appear on the record. The former practice continues. A pardon of treason or felony, even after conviction or attainder, will enable a person to maintain an action of slander for calling him a traitor or felon. A pardon, prior to conviction, will prevent any forfeiture either of lands or goods; though on the other hand, it will not, without express words of restitution, divest either the Crown or a subject of any interest already vested in either by force of an attainder or conviction precedent. See CORRUPTION OF BLOOD, and APPROVER.

Pardon, in the canon law, extends beyond the affairs of this world, being an indulgence which the pope grants to supposed penitents for remission, out of the treasury of saints, of the pains of purgatory, which they have merited for the punishment of their sins.

Pardoners, persons who carried about the pope's indulgences, and sold them to any who would buy them.

Parens est nomen generale ad omne genus cognationis. Co. Litt. 80.—(Parent is a name general for every kind of relationship.)

Parens Patriæ, the sovereign, as *parens patriæ*, has a kind of guardianship over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots, and lunatics.

Parentela, or *de parentelâ se tollere*, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, etc.—*Encyc. Lond.*

Parenthesis, part of a sentence occurring in the middle thereof; and enclosed between marks like ( ), the omission of which part would not injure the *grammatical* construction of the rest of the sentence.

Parenticide [fr. *parens*, Lat., a father, and *cædo*, to kill], one who murders a parent.

Parergon, one work executed in the intervals of another; a subordinate task. 2. The name of a work on the Canons, in great repute, by Ayliffe.

Pares, a person's peers or equals; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts.—8 *Bl. Com.* 349.

Paria copulantur paribus. Bacon.—(Like things unite with like.)

Pariar, Pariah, an outcast of the Hindoo tribes.—*Indian.*

Paribus sententiis reus absolvitur. 4 Inst. 64.—(Where the opinions are equal, a defendant is acquitted.)

Par in parem imperium non habet. Jenk. Cent. 174.—(An equal has no power over an equal.)

Pari passu [Lat.] (*by the same gradation*), equally, without preference.

Parish [fr. *parochia*, low Lat.; *paroisse*, Fr., fr. παροικία Gk., habitation], the particular charge of a secular priest. It is that circuit of ground which is committed to the care of one parson or vicar, or other minister having permanent cure of souls therein.—As to the origin of parishes, see 2 *Hallam's Mid. Ages*, c. vii., pt. 1, p. 144.

Parishioners are, at Common Law, a body politic for many purposes; as to vote at a vestry if they pay scot and lot; and they have a sole right to raise taxes for their own relief, without the interposition of any superior court. They may make bye-laws to mend the highway, and to make banks to keep out the sea, and making a bridge, etc., or any such thing for the public good.—*Encyc. Lond.*

A frequent definition of the term in modern statutes (see, e.g., Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 4) is 'a place for which a separate poor rate is or can be made'; and by the Interpretation Act, 1889, s. 5, in every Act passed after 1866 (the date of the Poor Law Amendment Act, 1866, the definition of s. 18 of which it follows), 'parish' means 'a place for which a separate poor rate is or can be made, *or* for which a separate overseer is or can be appointed.'

Parish Apprentices, persons who are bound out by the overseers of parishes, or by the guardians of the poor. The children of poor persons may be apprenticed out by the overseers, with consent of two justices, and by the guardians without such consent, till twenty-one years of age, to such persons as are thought fitting; who are no longer, however, compellable to take them.—7 & 8 *Vict.* c. 101,

s. 13; and see 14 & 15 Vict. c. 11, and 17 & 18 Vict. c. 104, ss. 141—145; and see *Steph. Com.*, 7th ed., ii. 230; iii. 54, n.

Parish Boundaries, see 1 Vict. c. 69, s. 2; 2 & 3 Vict. c. 62, ss. 34—6; 3 & 4 Vict. c. 15, s. 28; 8 & 9 Vict. c. 118, ss. 39—45; and 12 & 13 Vict. c. 83, ss. 1, 9. See also 38 & 39 Vict. c. 55, s. 278; and as to the better arrangement of divided parishes, see 39 & 40 Vict. c. 61.

Parish-clerk. This office is of extreme antiquity; next in dignity to the clergy, says Leland. He is generally appointed by the incumbent, but by custom may be chosen by the inhabitants; his appointment may be by word of mouth only; and his remuneration depends altogether upon the custom of the particular parish.—58 *Geo. III.* c. 45; 59 *Geo. III.* c. 134; 19 & 20 *Vict.* c. 104. He may be suspended or removed by the archdeacon for misconduct or neglect.—7 & 8 *Vict.* c. 59. The Company of Parish Clerks is the most ancient in the City of London; yet they stand at the bottom of the list, and have neither livery nor the privilege of making their members free of the city. See 2 *Steph. Com.*, 7th ed., 700.

Parish Constables. See CONSTABLES, and 35 & 36 Vict. c. 92, by which provision is made for their abolition.

Parishes (New) Acts, 6 & 7 Vict. c. 37, and other Acts. See NEW PARISHES ACTS.

Parish officers, churchwardens, overseers, and constables.

Parish priest, the parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called *rector*; if impropriated, *vicar*.

Parish registers. See BILLS OF MORTALITY.

Paritor [fr. *apparitor*, Lat.], a beadle; a summoner to the courts of civil law.

Parium eadem est ratio, idem jus.—(Of things equal, the reason is the same, and the same is the law.)

Park [fr. *parcus*, Lat., from *parco*, to spare], a place of privilege for wild beasts of venery, and other wild beasts of the forest and chase; who are to have a firm place and protection there, so that no man may hurt or chase them without license of the owner. A park differs from a forest, in that, as Compton observes, a subject may hold a park by prescription or royal grant. It differs from a chase because a park must be enclosed; if it lie open, it is a good cause of seizing it into the sovereign's hands, as a free chase may be if it lie enclosed. To a park three things are required—1st, a grant thereof; 2nd, enclosure by pale, wall, or hedge; 3rd, beasts of a park, such as buck, doe, etc.—*Cro. Car.* 59.

As to the management of the royal parks, see 'The Parks' Regulation Act, 1872,' 35 & 36 Vict. c. 15.

By 34 Vict. c. 13, repealed and re-enacted by the Mortmain and Charitable Trusts Act, 1888, proceeding on the preamble that it is expedient to facilitate gifts of land for the purpose of forming public parks, schools, and museums, it is provided that all gifts and assurances of land, up to a limited acreage, and whether made by deed, or by will or codicil for such purposes, and all bequests of personal estate to be applied in or towards the purchase of land for such purposes, shall be valid, notwithstanding the Statutes of Mortmain.

Park-bote (to be quit of enclosing a park or any part thereof).—4 *Inst.* 308.

Parker, a park-keeper.

Parkhurst Prison, established in the Isle of Wight for the confinement and correction of young offenders, male or female, as well those under sentence of penal servitude as those under sentence of imprisonment. See PENTONVILLE PRISON.

Parliament, the Imperial, the Legislature of the United Kingdom of Great Britain and Ireland, consisting of the Queen, the lords spiritual and temporal, and the knights, citizens, and burgesses.

The word is generally considered to be derived from the French *parler*, to speak. 'It was first applied,' says Blackstone, 'to general assemblies of the state, under Louis VII., in France, about the middle of the twelfth century.' The earliest mention of it in the statutes is in the preamble to the Statute of Westminster 1st, A.D. 1272.

'The main constitution of Parliament, as it now stands,' says Blackstone, 'was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the Great Charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons, personally, and all other tenants-in-chief under the Crown, by the sheriffs and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary; and this constitution has subsisted, in fact, at least from the year 1266 (49 Hen. III.), there being still extant writs of that date to summon knights, citizens, and burgesses to Parliament.'

The authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions. There are no other limits to its powers of making laws for the whole empire than those which are common to it, and to all other sovereign authorities, the willingness of the people to obey, or their

power to resist them. It has power to alter the constitution of the country; for that is the constitution which the last Act of Parliament has made.—The very prayers and services of the church are prescribed by statute. Parliament has altered the hereditary succession to the throne. To conclude, in the words of Sir Edward Coke, the power of Parliament 'is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds.'

The judicial functions of the Lords and their right to pass bills affecting the peerage, which the Commons may not amend, are the only properties peculiar to them apart from their personal rights and privileges.

The chief powers vested in the House of Commons are those of imposing taxes and voting money for the public service. Bills for these purposes can only originate in that House, and the Lords may not make any alterations in them, except for the correction of clerical errors.

Both Houses of Parliament possess various rights and privileges for the maintenance of their collective authority, and for the protection, convenience, and dignity of individual members. The power of commitment for contempt has always been exercised by both houses. The House of Lords, in addition to the power of commitment, may impose fines. Freedom of speech is one of the privileges claimed by the Speaker on behalf of the Commons; but it has long since been confirmed as the right of both Houses of Parliament by statutes. As also the privilege of causing the votes, proceedings, papers, etc., and the reports of any committee of either House to be published without responsibility to the law of libel on the part of the publisher or of any other person (3 & 4 Vict. c. 9); but should a member publish his speech, he is viewed as an author only; and if it contain libellous matter, he will not be protected by the privilege of Parliament.

The persons of members are free from arrest or imprisonment in civil actions, but their property is as liable to the legal claims of all other persons as that of any private individual. Their servants do not enjoy any privilege or immunity whatever.

The privilege of freedom from arrest has always been subject to the exception of cases of 'treason-felony, and surety of the peace.' Peers are always free from arrest; and as regards the Commons, their privilege is generally held to exist for forty days after every prorogation, and forty days before the next appointed meeting. See now IMPRISONMENT.

Each House of Parliament is acknowledged to be the judge of its own privileges.

In the House of Lords, business may proceed, however small may be the number of peers present; but forty members are required to assist in the deliberations of the Lower House.

When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the Lords, the parties in favour of the question are called 'content,' and those opposed to it 'non-content.' In the Commons those parties are described as the 'ayes' and 'noes.' When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place.

In addition to the power of expressing dissent by a vote, peers may record their opinion, and the grounds of it, by a protest, which is entered in the journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the Upper House, the Lords are summoned; and in the House of Commons an order is occasionally made that the House be called over, and members not attending when their names are called are reported as defaulters, and ordered to attend on another day, when if they are still absent, and no excuse be offered, an order is sometimes made for their commitment to the custody of the serjeant-at-arms.

See *May's Parliamentary Practice*, and *Chitty's Statutes*, vol. iv., tit. '*Parliament*,' and the titles HOUSE OF LORDS; HOUSE OF COMMONS; IMPEACHMENT; ACTS OF PARLIAMENT; PARLIAMENTARY COMMITTEE; BALLOT.

Parliamentary agents, persons professionally employed in the promotion of or opposition to private bills, and otherwise in relation to private business in Parliament. A solicitor may act as a parliamentary agent. As to the delivery, taxation, and recovery of their costs, see 10 & 11 Vict. c. 69, and 12 & 13 Vict. c. 78. The Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 57, provides that any person who at the time of the passing of that Act was entitled to practise as agent, in cases of election petitions, and matters relating to the election of members of the House of Commons, shall be entitled to practise as an agent in cases of election petitions and all matters relating to elections, before the court and judges prescribed by that Act.

Parliamentary committee, a committee of members of the House of Peers, or of the House of Commons, appointed by either House for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently

inquired into by the whole House. Not only any bill, but any subject that is brought under the consideration of either House, may, if the House thinks proper, be referred to a committee; and when the inquiry is ended, the committee, through their chairman, make a report to the House of the result. All private bills, such as bills for railways, canals, roads, or other undertakings, in which the public is concerned, are referred to committees of each House before they are sanctioned by that House. Their reports are not absolutely binding upon the House. Great weight is always attached to them, and the House seldom reverses their decision upon such matters. See REFEREES. As to the power of such committees to administer oaths to witnesses, see 21 & 22 Vict. c. 78, and 34 & 35 Vict. c. 3.

Parliamentary grants for education. See 7 & 8 Vict. c. 37; 18 & 19 Vict. c. 131; 19 & 20 Vict. c. 116; Elementary Education Act, 1870, 33 & 34 Vict. c. 75, ss. 96—99; and Elementary Education Act, 1891, by which a 'fee grant' of ten shillings per head is given, with the view of making education free.

Parliamentum indoctum (the unlearned Parliament). The Parliament of 6 Hen. IV., into which no lawyer was admitted as a knight of the shire.

Paroche, a parish.

Parochia est locus quo degit populus alicujus ecclesiæ. 5 Co. 67.—(A parish is a place in which the population of a certain church resides.)

Parochia, a parish.

Parochial, belonging to a parish. See POOR LAWS.

Parochial Assessment Act, 6 & 7 Wm. IV. c. 96, whereby poor-rates are made on the net annual value of the ratable property, etc.

Parochial chapels, places of public worship in which the rites of sacrament and sepulture are performed. See CHURCH BUILDING COMMISSIONERS ACTS.

Parochial buildings in Scotland. As to their erection and improvement, see 25 & 26 Vict. cc. 58, 103. And as to district parochial churches in Ireland, see 26 & 27 Vict. c. 123.

Parochial Records (Ireland). See PUBLIC RECORDS.

Parochian, a parishioner.

Parol, or **Parole** [fr. *parole,* Fr.], by word of mouth; but the expression is also made use of to denote writings not under seal.

The pleadings in an action were, when they were given *vivâ voce* in court, frequently termed the *parol.*

Parol agreements, such as are either by word of mouth or are committed to writing, but are not under seal. The Common Law draws only one great line between things under seal and not under seal. See *Leake on Contracts,* ch. iv.

Parol arrest, any justice of the peace may, by word of mouth, authorise any one to arrest another who is guilty of a breach of the peace in his presence.

Parol demurrer, abolished by 11 Geo. IV. & 1 Wm. IV. c. 74, s. 10.

Parol evidence, testimony by the mouth of a witness. It is a general rule that oral evidence cannot be substituted for a written instrument, where the latter is required by law, or to give effect to a written instrument, defective in any particular essential to its validity; nor contradict, alter, or vary a written instrument, required by law, or agreed upon by the parties, as the authentic memorial of the facts which it recites. But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, etc., or to apply it to its proper subject, or, in some instances, as ancillary to such application to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases the parol evidence does not usurp the place of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. The general rule with regard to the admission of parol evidence to explain the meaning of, or to add to, vary, or alter the express terms of deed, is, that it shall not be admitted, except: (1) where, although the deed is clearly enough expressed, some ambiguity arises from extrinsic circumstances; (2) where the language of a charter or deed has become obscure from antiquity; (3) where the grant is uncertain owing to a want of acquaintance with the grantor's estate: (4) where it is important to show a different consideration consistent with, and not repugnant to, that stated in the deed itself; (5) where it becomes necessary to show a different time of delivery from that at which the deed purports to have been made; (6) where it is sought to prove a customary right not expressed in the deed, but not inconsistent with any of its stipulations; or, lastly, where fraud or illegality in the formation of the deed is relied on to avoid it. If a clause in a deed be so ambiguously or defectively expressed that a court of justice cannot, even by reference to the context, collect the meaning of the parties, it would be void on account of uncertainty. Consult *Taylor on Evidence.*

Parole, the promise made by a prisoner of war, when he has leave to go anywhere, of returning at a time appointed, or not to take up arms till exchanged.

Parricide, same as patricide (*q.v.*). Our laws, unlike the ancient laws, distinguish in no respect between parricide, killing a husband, wife, or master, and simple murder.

Parson [fr. *persona*, Lat., because the parson *omnium personam in ecclesiâ sustinet*; or from *parochianus*, the parish-priest.—*Johnson.* It was anciently written *persone.*—*Todd*], the rector or incumbent of a parish; one that has a parochial charge or cure of souls.

A parson has the freehold in himself of the parsonage-house, the glebe, the tithes, and other dues; but these are sometimes appropriated. The benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living, which the law esteems equally capable of providing for the service of the church as any clergyman. Many appropriations, however, are now in the hands of lay persons, who are usually styled, by way of distinction, lay impropriators. In all appropriations there is generally a spiritual person attached to the church, under the name of vicar, to whom the spiritual duty or cure of souls belongs, in the same manner as to the rector in parsonages not appropriate, or rectories, and to whom a portion of the tithes, etc., is assigned.

The method of becoming a parson or vicar is much the same. There are four requisites: holy orders, presentation, institution, and induction. A parson or vicar may cease to be so by death, by cession, or by taking another benefice, by consecration to a bishopric, by resignation, or by deprivation.—3 *Steph. Com.*

Parsonage, the benefice of a parish. 2. The parson's house. As to borrowing money for building, rebuilding, or repairing a parsonage, see 'Gilbert Act,' 17 Geo. III. c. 53.

Parson imparsonee [fr. *persona impersonata*, Lat.], a clerk in complete and full possession of a spiritual benefice.

Parson mortal [fr. *persona mortalis*, Lat.], a rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was for ever appropriated, was termed *persona immortalis.*

Pars pro toto, the name of a part used to represent the whole; as the roof for the house, ten spears for ten armed men, etc.

Pars rationabilis, the ancient division of a man's goods into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children, and so *è converso*; but if he died without either wife or issue, the whole was at his own disposal. The shares of the wife and children were called their reasonable parts; and the writ *de rationabili parte bonorum* was given to recover them. This law has been altered by imperceptible degrees, and any person may by will bequeath all his property as he pleases.

Partem aliquam recte intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit. 3 Co. 52.—(No one can rightly understand any part until he has read the whole again and again.)

Partes finis nihil habuerunt, etc. (*the parties to the fine had nothing*, etc.), an exception taken against a fine levied.—3 *Rep.* 88.

Partial insanity, mental unsoundness always existing, although only occasionally manifest; in fact, monomania.—*Waring* v. *Waring*, 6 *Moore P. C.* 341; and *Smith* v. *Tibbett*, *L. R.* 1 *P. & M.* 398.

Partial loss. See ABANDONMENT.

Particata terræ, a rood.—*Spelm.*

Particeps criminis, or **fraudis** (*a partner in crime*, or *fraud*).

Participes plures sunt quasi unum corpus in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nullâ parte sit defectus. Co. Litt. 4.—(Many parceners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.)

Particula, a small piece of land.

Particular Average. Every kind of expense or damage, short of total loss, which regards a particular concern, and which is to be borne by the proprietors of that concern alone. (*Stevens and Benecke on Average, by Phillips*, 341.) A loss borne wholly by the party upon whose property it takes place.—2 *Phillips on Insurance*, s. 1422 *et seq.* See *L. R.* 1 *C. P.* 535, and 2 *C. P.* 357.

Particular estate, that interest which is granted or carved out of a larger estate, which then becomes an expectancy either in reversion or remainder. See 3 *Prest. Conv.* 169.

Particular lien, a right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied. See LIEN.

Particular tenants, Alienation by, when they conveyed by a feoffment, fine, or recovery, a greater estate than the law entitled them to make, a forfeiture ensued to the person in immediate remainder or reversion. As if a tenant for his own life alienated by feoffment for the life of another or in tail or in fee, these being estates which either must or may last longer than his own, his creating them was not only beyond his power, and inconsistent with the nature of his interest, but was also a forfeiture of his own particular

estate to him in remainder or reversion, who was entitled to enter immediately.

The same law which is thus laid down with regard to tenants for life held also with respect to all tenants of mere chattel-interests.

This forfeiture differed materially from forfeiture by breach of condition in deed, for in that case the reversioner is in as of his former seisin, and consequently not only the estate of the tenant himself, but all interests derived out of it (even though derived before the forfeiture) were defeated; but in case of such forfeiture by particular tenants, all legal estates by them created (as if tenant for twenty years grant a lease for fifteen), and all charges by him lawfully made on the lands, would have been good and available in law. But fines and recoveries having been abolished and a feoffment having no longer a tortious operation (8 & 9 Vict. c. 106, s. 4), a tenant, by creating a larger interest than he has in the property, does not incur a forfeiture, for such a creation is now void as to the excess, and good for his own interest.—1 *Steph. Com.*, 7th ed., 463.

Particulars. The Courts have a general jurisdiction, independently of statute, to order a detailed statement of the demand in *any* litigation, or of *any* defence, to be given that surprise may be avoided, and substantial justice promoted.—2 *Chit. Arch. Prac.* The necessity for applications for particulars has become less frequent, since the Judicature Acts, as the Rules of Court under those Acts have substituted a statement of claim containing the material facts on which the plaintiff relies for the declaration under the old practice, which only contained a legal statement of the plaintiff's cause of action.

Particulars of Sale. See CONDITIONS OF SALE.

Parties, persons jointly concerned in any act; litigants.

The Rules of the Supreme Court, 1883, Ord. XVI., make very full provisions as to the joinder of parties and the consequences of mis-joinder and non-joinder. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. Two or more defendants may be joined, in case the plaintiff is in doubt as to the person from whom he is entitled to redress. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested. 'No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the names of any parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.' (r. 11.)

The same Order, Rules 48—55, allows the introduction of 'third parties' in cases where the defendant claims any remedy over against any other person. See THIRD PARTY.

By the Judicature Act, 1873, s. 100, the word 'party' includes every person served with notice of, or attending any proceeding, although not named on the record.

As to change of parties by death, etc., see ABATEMENT; and as to who ought to be made parties, see *Dicey on Parties.*

The order in which the parties to a conveyance are set out is as follows: (1) The owner of the legal inheritance; (2) Persons having equitable or beneficial interests in the inheritance; (3) Persons possessed of chattel interests; (4) The grantee or releasee; (5) Trustees for the grantee or releasee.

In criminal cases the parties are the prosecutor and the prisoner or defendant.

Parties to a cause, civil or criminal, have a right to be present, in any case, throughout the trial. See WITNESSES.

Partition, the act of dividing.

Partition, Bill for a, a proceeding in Chancery which resembled the action *communi dividendo* of the civil law.

Since the abolition of the inadequate writ of partition at Common Law, by 3 & 4 Wm. IV. c. 27, s. 36, equity has enjoyed the exclusive jurisdiction of dividing the estates of joint tenants, tenants in common, and coparceners, which is effected by first ascertaining the rights of the several persons interested, and then issuing a commission, which is an equitable process to make the partition required; and upon the return of the commissioners, and confirmation of that return by the Court, the partition is finally

completed by mutual conveyances of the allotments made to the several parties.

With a view to the more convenient and perfect partition or allotment of the premises, equity frequently decrees a pecuniary compensation to one of the parties for 'owelty,' i.e., equality of partition, so as to prevent any injustice or unavoidable inequality, as where one party has laid out large sums in improvements on the estate.

On a partition, not every part of the estate need be divided. If there be three houses, it would not be right to divide every house, for that would be to spoil them; but some recompense is to be made, either by a sum of money or rent for owelty of partition, to those that have the houses of least value.

The commissioners are not limited as to time in executing the commission; the proceedings under it are open, and may take place in, or within twenty miles of, London, all parties having a right to be present, as the commissioners act in a judicial capacity. They proceed without a jury. It is not usual to give any costs of a petition until the commission; but the costs of issuing and executing it, and of confirming the return of the commissioners, are borne by the parties in proportion to the value of their respective interests, no costs of the subsequent proceedings being given. See *Dan. Ch. Pr.*, 5th ed., 1019 *et seq.*; and see next title.

By the Partition Act, 1868, 31 & 32 Vict. c. 40, it is provided (s. 3) that in a suit for petition where, if this Act had not been passed, a decree for partition might have been made, then if it appear to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property, the Court may, on the request of any of the parties interested, and notwithstanding the dissent or disability of any other of them, direct a sale of the property accordingly.

The partition and sale of real estates is one of the matters assigned to the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 34).

Partition, Deed of, a primary or original conveyance. When an estate is held in community by joint tenants, tenants in common, coparceners, or joint heirs in gavelkind, and they are desirous of dividing it into distinct portions, to be exclusively enjoyed by each, and are not under legal disability, they can accomplish this object by this deed. Sometimes, instead of agreeing as to their several allotments, a reference is made to a person by them to divide the estate into the required portions, and a good plan of effecting this division is to convey the whole estate to the proposed referee upon trust to convey the several allotments to the respective parties according to his award. A partition of any tenements or hereditaments, not being copyhold, is void at law, unless made by deed (8 & 9 Vict. c. 106, s. 3), and it is no longer to imply any condition in law (Ibid., s. 4), so that a declaration negativing implied mutual warranty is now unnecessary.

In Kent, where the land is of gavelkind tenure, they call these partitions *shifting*, from the Saxon, *shiftan*, to divide.

Partition, Writ of, abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Partner, partaker, sharer; one who has part in anything; associate. See next title.

Partnership, the relation which subsists between persons carrying on a business with a view of profit. So it is defined by s. 1, subs. 1 of the Partnership Act, 1890, 53 & 54 Vict. c. 39, a codifying Act of 50 sections 'to declare and amend the law of partnership,' which, in effect, transfers the law of the subject from the region of reported cases to that of the statute; the short 'Bovill's Act' (see that title) of 1865, 28 & 29 Vict. c. 86, and a small part of the Mercantile Law Amendment Acts, of 1856, being the only previous statutory enactments on the subject.

Rules, which, however, are subject to any agreement express or implied between the partners, are laid down by s. 24 for determining the interest of partners in the partnership property and their rights and duties in relation to the partnership. They provide, amongst other things, for equal shares in profits and equal contribution to losses; for indemnification of every partner by the firm in respect of payments properly made for the firm; that every partner may take part in the business; that no partner is to be entitled to remuneration; that 'no person may be introduced as a partner without the consent of all existing partners'; that differences as to ordinary matters may be decided by a majority, but that 'no change may be made in the nature of the business without the consent of all existing partners'; and that the partnership books are to be kept at the place of business of the partnership where every partner may have access to them.

The Act of 1890 is mainly declaratory. The chief amendment is that of the 23rd section, by which the judgment creditor of a partner, instead of being able to execute not only against his debtor's separate property and also against the property of the firm,

may only obtain an order charging the partner's interest in the partnership property, and appointing a receiver in his share of profits.

See *Lindley on Partnership*; *Pollock on Partnership*.

Part-owners, or **Quasi-partners** [*quasi associés*, Lat., Fr.], joint-owners, or tenants in common, who have a distinct, or at least an independent, although an undivided interest in the property. Neither of them can transfer or dispose of the whole property, or act for the others as partners can in relation thereto; each can merely deal with his own share, and to the extent of his own several right and interest.

Part-owners of ships are tenants in common, holding distinct and undivided interest, and each is deemed the agent of the others, as to the ordinary repairs, employment, and business of the ship, in the absence of any known dissent. A majority in interest of the owners can employ the ship, although the minority may dissent, and they may appoint a master, and the dissenting minority will be bound, unless those dealing with the master have had notice of their dissent, or they have protected themselves by proper proceedings in the Court of Admiralty.—*Story's Agency*, 37.

Partridge, a fowl of warren. See GAME.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum. Fortescue, 42.—(The offspring of a legitimate bed knows not his mother more certainly than his father.)

Partus sequitur ventrem. 2 Bl. Com. 390. —(The offspring follows the dam.) This maxim applies to the *status* of the issue of a female slave by a free father in countries where slavery is recognized.

Party-wall, a wall that separates one house from another. See cases collected in 5 *Fisher Dig.*, 990, *et. seq.*

The common use of a wall separating adjoining lands belonging to different owners is *primâ facie* evidence that the wall and the land on which it stands belong to the owners of those adjoining lands, in equal moieties, as tenants in common. If a house or office be separated from other premises by a wall, and that wall belongs to the owner of the house or office, he is of common right bound to repair it; and an action will lie against him for not doing it. As to the repair of party structures and the rights of building and adjoining owner under the Metropolitan Building Act, 1855, see Part III. of that Act.

Parum differunt quæ re concordant. 2 Bulst. 86.—(Things which agree in substance differ but little.)

Parum est latam esse sententiam nisi mandetur executioni. Co. Litt. 289.—(It is not enough that sentence be given, unless it be ordered into execution.)

Parvise, an afternoon's exercise or moot for the instruction of young students—bearing the same name originally with the *Parviseæ* (little-go) of Oxford.—*Selden's Notes on Fortescue*, c. li.

Pas (French), precedence; right of going foremost.

Pasch [fr. *pasahh*, Heb.], the passover.

Pascha clausum, the octave of Easter, or Low-Sunday, which closes that solemnity.

Pascha floridum, the Sunday before Easter, called Palm-Sunday.

Pascha rents, yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

Pascua, a particular meadow or pasture land set apart to feed cattle.

Pascuage, the grazing or pasturage of cattle.

Pasnage, or **Pathnage in woods**, etc. See PANNAGE.

Passage, properly a way over water.

Passagio, an ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea.—*Reg. Orig.*, 193.

Passagium regis, a voyage or expedition to the Holy Land made by the Kings of England in person.—*Cowel.*

Passator, he who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.

Passengers, persons conveyed for hire from one place to another. Passenger-ships are those peculiarly appropriated to the conveyance of passengers. In some respects, passengers by ship may be considered as a portion of the crew. They may be called on by the master or commander of the ship, in case of imminent danger, either from tempest or enemies, to lend their assistance for the general safety; and in the event of their declining, may be punished for disobedience. This principle has been recognised in several cases; but as the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity.—*Boyce* v. *Bayliffe*, 1 *Camp.* 58.

A passenger is not, however, bound to remain on board a ship in the hour of danger, but may quit it if he have an opportunity; and he is not required to take upon himself any responsibility as to the conduct of the ship; if he incur any responsibility, and perform extraordinary services, in relieving a vessel in distress, he is entitled to a corresponding reward. The goods of passengers

contribute to general average.—*Abbot on Shipping*, 3, c. x.

Passengers Acts, 16 & 17 Vict. c. 84; 18 & 19 Vict. c. 119; 26 & 27 Vict. c. 51; 33 & 34 Vict. c. 95; and 35 & 36 Vict. c. 73. These Acts regulate the inspection of passenger ships, the provisions and boats which they are to carry, etc., and are especially directed to the control of emigrant ships.

Passenger-ship. For definition of, see 26 & 27 Vict. c. 51, s. 3, and see preceding title.

Passiagiarius, a ferry-man.—*Jacob.*

Passing-ticket, a kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

Passive debt, a debt upon which, by or without agreement between the debtor and creditor, no interest is payable, as distinguished from *active* debt, i.e., a debt upon which interest is payable. In this sense, the terms active and passive were long applied to certain debts due from the Spanish Government.

Passive trust, a trust as to which the trustee has no active duty to perform. Passive uses were resorted to before the Statute of Uses, in order to escape from the trammels and hardships of the Common Law, the permanent division of property into legal and equitable interests being clearly an invention to lessen the force of some pre-existing law. For similar reasons, equitable interests were after the statute revived under the form of trusts. As such, they continued to flourish, notwithstanding the singular amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlements, were resorted to, and hence, trusts to preserve contingent remainders; and passive trusts were and are created in order to prevent dower.

Where an active trust was created, without defining the quantity of the estate to be taken by the trustee, the Courts endeavoured to give by construction the quantity originally requisite to satisfy the trust in every event, but if a larger estate was expressly given, the Courts could not reject the excess; and, although the estate taken, whether expressly or constructively, might not have exceeded the original scope of the trust, yet, if eventually no estate, or a less estate, were actually wanted, the legal ownership remained wholly or partially vested in the trustee as a merely passive trustee.—1 *Hayes' Conv.*

Passive use, a permissive use, which see.

Passport, a license for the safe passage of any one from one place to another, or from one country to another. The duty on passports was reduced from 5*s.* to 6*d.* by 21 Vict. c. 24. The same rate is continued by the Stamp Act, 1870 (33 & 34 Vict. c. 97).

Pastitium, pasture land.—*Domesday.*

Pastor [Lat., a shepherd], applied to a minister of the Christian religion, who has charge of a congregation, hence called his flock.

Pasture, land on which cattle feed. See *Elphinstone, Interpretation of Deeds*, 607.

It is of two sorts; the one is low meadowland, which is often overflowed, and the other is upland, which lies high and dry. See COMMON. The laying down permanent pasture with the written consent of a landlord is an improvement for which the tenant is entitled to compensation on quitting by the Agricultural Holdings Act, 1883. See that title.

Pastus, the procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

Patent ambiguity, a doubt apparent upon the face of an instrument. See AMBIGUITY.

Patent Letters. See LETTERS-PATENT.

Patent-right, the exclusive privilege granted by the Crown to the first inventor of a new manufacture of making articles according to his invention. See LETTERS-PATENT.

Patent-rolls, registers in which letters-patent are recorded.

Patentee, one who has a patent. The offices of patentee and deputy patentee of the *Subpœna* office are abolished by 15 & 16 Vict. c. 87, s. 27.

Pater est quem nuptiæ demonstrant. Co. Litt. 123.—(He is the father whom the nuptials indicate.)

Paterfamilias, one who was *sui juris* and the head of a family.—*Civ. Law*; *Sand. Just.*, 7th ed., 26.

Paternity. It becomes a question, when a widow marries immediately after the death of her husband, and she is delivered of a child at the expiration of ten months from the death of the first husband, as to the paternity of the child. Blackstone and Coke say, that if a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate, for he may, when he arrives at years of discretion, choose which of the fathers he pleases. But Hargrave suggests, that the circumstances of the case,

instead of the choice of the issue, should determine who is the father. The Romans forbade a woman to marry until after the expiration of ten months from her husband's decease, which term was prolonged to twelve by Gratian and Valentinian. The French code has adopted the same rule, viz.: after ten months. It was also established under the Saxon and Danish governments. It was the law in this country until the Conquest.—*Beck's Med. Jurisp.*

Patibulary [fr. *patibulum*, Lat.], belonging to the gallows.

Patibulated, hanged on a gibbet.

Patria, the country; the men or jury of a neighbourhood.

Patria potestas, paternal power.—*Civ. Law.* For the extent of this great power see *Sand. Just.* 7th ed., 29. The modes in which the *patria potestas* was ended were: (1) The death of the parent; (2) the parent or son suffering loss of freedom or citizenship; (3) the son attaining certain dignities; (4) emancipation.

Patriarch, the chief bishop over several countries or provinces, as an archbishop is of several dioceses.—*God.* 20.

Patricide, one who has killed his father. As to the punishment of that offence by the Roman law, see *Sand. Just.*, 7th ed., 506.

Patricius, a title of the highest honour, conferred on those who enjoyed the chief place in the emperor's esteem.—*Civ. Law.*

Patrimony, an hereditary estate or right descended from ancestors.

Patrinus, a godfather.

Patriotic Fund Act, 1867 (30 & 31 Vict. c. 98).

Patritius, an honour conferred on men of the first quality in the time of the English Saxon kings.

Patron, one who has the disposition of an ecclesiastical benefice; (2) among the Romans an advocate or defender. See CLIENT.

Patronage, the right of presenting to a benefice. A disturbance of patronage is a hindrance or obstruction of a patron to present his clerk to his benefice, the remedy for which was the real action of *quare impedit.* But see now the C. L. P. Act, 1860, s. 26.

As to the abolition of patronage in Scotland see 37 & 38 Vict. c. 82.

Patronatus, patronage.

Patronum faciunt dos, ædificatio, fundus. Dod. Adv. 7.—(Endowment, building, and land make a patron.)

Patruelis, a cousin-german by the father's side; the son or daughter of a father's brother.—*Civ. Law.*

Patruus, an uncle by the father's side, a father's brother; *magnus*, a grandfather's brother, grand-uncle; *major*, a great grandfather's brother; *maximus*, a great grandfather's father's brother.

Pauper, a person maintained in a workhouse at the expense of those who pay the rates for the relief of the poor. See CASUAL PAUPER; POOR-LAWS; and IN FORMA PAUPERIS; and as to education of pauper children, see EDUCATION.

Pauper Lunatic Asylums. 26 & 27 Vict. c. 110.

Pavage, money paid towards paving the streets or highways.

Paving Acts. As to Local Government Districts, see the Public Health Act, 1875 (38 & 39 Vict. c. 55); and as to the Metropolis, see the Metropolis Management Acts.

Pawn, or **Pledge** [fr. *pignus*, Lat.], a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged.

A mortgage of goods is in the Common Law distinguishable from a mere pawn. By a mortgage the whole legal title passes conditionally to the mortgagee; and if the goods be not redeemed at the stipulated time, the title becomes absolute at law although equity allows a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledgor. Also, in the case of a pledge, the right of the pledgee is not consummated, except by possession; and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property, the right of property passes by the conveyance to the mortgagee, and possession is not or may not be essential to create or support the title.

As to things which may be the subject of pawn: These are, ordinarily, goods and chattels; but money, debts, negotiable instruments, choses in action, and indeed any other valuable thing of a personal nature, such as patent-rights and manuscripts, may by the Common Law be delivered in pledge. It is not indispensable that the pledge should belong to the pledgor; it is sufficient if it is pledged with the consent of the owner. By the pledge of a thing, not only the thing itself is pledged, but also as accessory, the natural increase thereof. If the pledgor have only a limited title to the thing, as for life or for years, he may still pawn it to the extent of his title; but when that expires, the pledgee must surrender it to the person who succeeds to the ownership. See 6 Geo. IV. c. 94, and 7 & 8 Geo. IV. c. 29, enabling factors, in certain cases, to pledge the goods of their principals.

It is of the essence of the contract that

there should be an actual delivery of the thing to the pledgee; for until delivery, the whole contract is executory, however strong may he the engagement to deliver it; and the pledgee acquires no right of property in it. But there need not be an actual manual delivery, as it is sufficient if there are any of those acts or circumstances which, in construction of law, are deemed sufficient to pass the possession of property, as the key of a warehouse. As possession is necessary to complete the title, so by the Common Law the title determines if the pledgee lose the thing pledged, or deliver it back to the pledgor unless for a temporary or special purpose.

It is also of the essence of the contract that the thing should be delivered as a security for some debt or engagement. It may be delivered as security for a future debt or engagement, as well as for a past debt; for one or for many debts and engagements; upon condition or absolutely; for a limited time or for an indefinite period. It may also be implied from circumstances, as well as arise by express agreement, and it matters not what is the nature of the debt or the engagement. The pledge is understood to be a security for the whole and for every part of the debt or engagement. It is indivisible; *individua est pignoris causa.*

As to the pledgee or pawnee's rights and duties: The pawnee acquires, in virtue of the pawn, a special property in the thing, and is entitled to the exclusive possession of it during the time and for the objects for which it is pledged. In regard to the expenses which have been incurred by the pledgee about the pledge, if they are necessary, then the pledgor is bound to reimburse them to the pledgee, but if they are merely useful, then he is not bound to reimburse them unless incurred by his own express or implied authority. The pledgee has a right to sell the pledge, when the pledgor fails to perform his engagement. He might have filed a bill in equity against the pledgor for a foreclosure and sale, or he may proceed to sell *ex mero motu*, upon giving due notice of his intention to the pledgor. If several things be pledged, each is deemed liable for the whole debt or engagement; and the pledgee may proceed to sell them from time to time, until the debt or other claim be completely discharged. The possession of the pawn does not suspend the right to sue for the whole debt or other engagement without selling the pawn, for it is only a collateral security. A pawnee cannot become the purchaser at the sale. A pledgee cannot alienate the property absolutely, nor beyond the title actually possessed by him, unless in special cases. He may deliver the pawn into the hands of a stranger for safe custody, without consideration; or he may sell or assign all his interest in the pawn, or he may convey the same interest conditionally, by way of pawn, to another person, without destroying or invalidating his security.

The following rules elucidate the principles as to the pawnee's title to use the pawn:—

(1) If the pawn is of such a nature that the due preservation of it requires some use, there such use is not only justifiable, but it is indispensable to the faithful discharge of the duty of the pawnee.

(2) If the pawn is of such a nature that it will be worse for the use, such, for instance, as clothes, the use is prohibited to the pawnee.

(3) If the pawn is of such a nature that the keeping is a charge to the pawnee, as a cow or horse, there the pawnee may milk the cow and use the milk, and ride the horse by way of recompense for the keeping.

(4) If the use will be beneficial to the pawn, or it is indifferent, there it seems that the pawnee may use it.

(5) If the use will be without any injury, and yet the pawn will thereby be exposed to extraordinary perils, there the use is impliedly interdicted.

The pawnee is liable for ordinary neglect in keeping the pawn. He must return the pledge and its increments, if any, after the debt or other duty has been discharged. He must render a due account of all the income, profits, and advantages derived by him from the pledge, in all cases where such an account is within the scope of the bailment.

As to the pledgor's rights and duties:—

If the pledge is conveyed by way of mortgage, so that the legal title passes unless the pledge is redeemed at the stipulated time, the title of the pledgee becomes absolute at law; and the pledgor has only an equitable right to redeem. If, however, it be a mere pledge, as the pledgor has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the condition of his contract. If, when the pledgor applies to redeem, the pledge has been sold by the pledgee without any proper notice to the former, no tender of the debt due need be made before bringing an action therefor; for the party has incapacitated himself to comply with his contract to return the pawn. Subject to the pledgee's right, the owner has a right to sell or assign his property in the pawn. As the general property of goods pawned remains in the pawnor, and the pawnee has a special property only, either may maintain an action against a stranger for any injury done to it, or for any conversion of it. Goods pawned are not liable to be taken

in execution in an action against the pawnor, at least, not unless the bailment is terminated by payment of the debt, or by some other extinguishment of the pawnee's title, except in case of the Crown, and then subject to the pawnee's right. By the act of pawning, the pawnor enters into an implied engagement of warranty that he is the owner of the property pawned. The pawnor is responsible for all frauds, not only in the title but in the concoction of the contract. The pawnor must reimburse to the pawnee all expenses and charges which have been necessarily incurred by the latter in the preservation of the pawn, even though by some subsequent accident these expenses and charges may not have secured any permanent benefit to the pawnor.

The contract of pledge is put an end to or extinguished:—

(1) By the full payment of the debt, or the discharge of the other engagements for which the pledge was given;

(2) By the satisfaction of the debt in any other mode, either in fact or by operation of law; as, for instance, by receiving other goods in payment or discharge of the debt;

(3) By taking a higher or different security for the debt, without any agreement that the pledge shall be retained therefor (this is called a *novation* in the Roman law);

(4) By extinguishing the debt, which also extinguishes the right to the pledge;

(5) By the things perishing;

(6) By any act of the pledgee which amounts to a release or waiver of the pledge. —*Story on Bailments*, c. v. See PAWNBROKERS' ACTS.

Pawnage, or **Pannage**. See PANNAGE.

Pawnbroker, one who lends money on goods which he receives upon pledge.

Pawnbrokers. The rate of interest which pawnbrokers may take has been fixed by law since 39 & 40 Geo. III. c. 48, which Act placed their whole business under various other restrictions. By the Pawnbrokers Act, 1872, 35 & 36 Vict. c. 93, this Act, together with its amending Acts, is repealed, and the statute law of the subject consolidated. Consult *Turner on the Contract of Pawn*, and *Singer Manufacturing Co.* v. *Clark*, 5 *Ex. D.* 37.

Pawnee, the person with whom a pawn is deposited. See PAWN.

Pawner, or **Pawnor**, the person depositing a pawn. See PAWN.

Pax regis, the king's peace—verge of the court.

Payee, one to whom a bill of exchange or promissory note or cheque is made payable: he must be named or otherwise indicated therein, with reasonable certainty. The bill, note, or cheque may be made payable to one or more payees jointly, or in the alternative to one of two or one or some of several payees, or to the holder of an office for the time being; but where the payee is a fictitious or non-existing person, it may be treated as payable to bearer.—*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 7.

Paymaster-General. Under the 35 & 36 Vict. c. 44, the office of Accountant-General of the Court of Chancery has been abolished, and the duties transferred to Her Majesty's Paymaster-General. Rules with respect to the Paymaster-General are authorised to be made by the Judicature Act, 1875, s. 24, and see further s. 30 of that Act.

Payment. The payment of money before the day appointed is in law payment at the day; for it cannot, in presumption of law, be any prejudice to him to whom the payment is made to have his money before the time; and it appears, by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it.—5 *Rep.* 117. See the notes to *Cumber* v. *Wane*, in 1 *Smith's L. C.*

Payment of money into Court. By the C. L. P. Act, 1852, s. 70, the defendant in all actions (except for assault and battery, false imprisonment, libel, slander, malicious arrest, or prosecution, or seduction) might pay into court a sum of money by way of compensation or amends, and by 6 & 7 Vict. c. 96, money might be paid into court in actions of libel, but this provision was repealed by the Statute Law Revision Act, 1879.

In actions against justices of the peace, or officers of the excise or customs, and other persons acting in the performance of certain public functions for anything done in the execution of their offices, if they had not made a tender, or if they conceived the amends tendered to be insufficient, they might pay into court a sum of money.

Payment into court is now regulated by R. S. C. 1883, Ord. XXII., by which where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or by leave of the Court or a judge at any later time, pay into court a sum of money by way of satisfaction, which is taken to admit the cause of action; 'or he may, except in actions for libel or slander, pay money into court *with a defence denying liability*,' which he could not do before 1883.

Peace, a quiet behaviour towards the Queen and her subjects. It is one of the prerogatives of the Crown to make war and peace.

Peace, Bill of. This equitable remedy

sought repose from perpetual and useless litigation, and protection from a multiplicity of suits, either by establishing and perpetuating a right which the plaintiff claimed, and which, from its nature, might be controverted by different persons at different times and by different actions: or where separate attempts had already been unsuccessfully made to overthrow the same right, and justice required that the plaintiff should be quieted in the right if it was already, or if it should be thereafter, established under the direction of the Court.

This bill was usually filed where there was one general right to be established against a great number of persons; or where one person claimed or defended a right against many; or where many claimed or defended a right against one. Thus it was filed by a parson for tithes against his parishioners; by parishioners against a parson to establish a *modus*; by a lord of a manor against the tenants for an encroachment under colour of a common right; or by the tenants against the lord for disturbance of a common right by a party interested to establish a toll due by custom; for a right to the profits of a fair, there being several claimants; by a lord to establish an inclosure which he has approved under the Statute of Merton (20 Hen. III. A.D. 1236), and which his tenants threw down, although sufficient common of pasture was left. Another class of cases to which this bill was applicable, was where the plaintiff had, after repeated and satisfactory trials, established his right at law, and yet was in danger of further litigation and obstruction to his right from new attempts to controvert it. Under such circumstances courts of equity would interfere and grant a perpetual injunction to quiet the possession of the plaintiff, and to suppress future fruitless litigation.

The bill usually prayed special relief, as that the plaintiff might be quieted in the possession till the right was tried at law, as well as relief in the premises, or a perpetual injunction.—*Sto. Eq. Jur.* c. xxii.; and 1 *Madd. Ch.* 234; 4 *Dan. Ch. Pr.*

The results obtained by this bill may now be obtained by an action in the High Court of Justice.

Peace, Breach of the, a violation of that quiet, peace, and security which is guaranteed by the laws for the personal comfort of the subjects of this kingdom. An ordinary subject of the Crown must act as a peace-officer to arrest an offender if a felony is committed, or a bad wound given in his presence; and an ordinary subject may arrest another who is on the point of committing murder, and may break and enter a house to do so; and may arrest a lunatic about to do a mischief, and may arrest one against whom an indictment has been found; or may arrest one to put a stop to a breach of the peace committed in his presence. See also BREACH OF THE PEACE.

Peace, Clerk of the, an officer who acts as clerk to the court of quarter sessions, and records all their proceedings.—7 *Wm. IV. &* 1 *Vict.* c. 83. As to the remuneration, see 57 Geo. III. c. 9; 14 & 15 Vict. c. 55, s. 9; and 18 & 19 Vict. c. 126, s. 18. As to their removal, see 27 & 28 Vict. c. 65.

Peace, Commission of the, a special commission under the Great Seal, appointing justices of the peace. It is one of the authorities, by virtue of which the judges sit upon circuit.—3 *Bl. Com.* 60. See ASSIZE and JUSTICES.

Peace, of God and the Church [*pax Dei et ecclesiæ*, Lat.], was anciently used to signify that cessation which the king's subjects had from trouble and suit of law between the terms, and on Sundays and holidays.—*Cowel.*

Peace, Justices of. See JUSTICES.

Peace of the Queen [*pax reginæ*, Lat.], that security for life and goods, which the Queen promises to all her subjects, or others taken into her protection. See PEACE, BREACH OF.

Peace Preservation (Ireland) Acts, 33 & 34 Vict. c. 9; 34 & 35 Vict. c. 25; 36 & 37 Vict. c. 24; and 38 & 39 Vict. c. 14.

Peccata contra naturam sunt gravissima. 3 Inst. 20.—(Crimes against nature are the most heinous.)

Peccatum peccato addit qui culpæ quam facit patrocinia defensionis adjungit. 5 Co. 49.—(He adds fault to fault who sets up a defence of a wrong committed by him.)

Pecia, a piece or small quantity of ground. —*Paroch. Antiq.* 240.

Peck, a measure of two gallons: a dry measure.

Peculatus, embezzling public money.

Peculiar, a particular parish or church that has jurisdiction within itself, and exemption from that of the ordinary. There are several sorts:—(1) Royal peculiars, which are the sovereign's free chapels, and are exempt from any jurisdiction but that of the sovereign. (2) Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from a privilege they had to enjoy jurisdiction in such places where their seats and possessions were. (3) Peculiars of bishops, exclusive of the jurisdiction of the bishops of the diocese in which they are situate. (4) Peculiars of bishops in their own dioceses, exclusive of archidiaconal jurisdiction. (5) Peculiars of deans, deans and chapters, prebendaries, and the like, which are places

wherein, by ancient compositions, the bishops have parted with their jurisdiction as ordinaries to these corporations.

Peculiars, Court of, a branch of, and annexed to the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions are originally cognizable in this court, from which an appeal lies to the Court of Arches.—3 *Steph. Com.*, 7th ed., 306. See now 37 & 38 Vict. c. 85, and title PUBLIC WORSHIP REGULATION ACT.

Peculium, the savings of a son or slave accumulated with the father or master's consent.—*Civ. Law.*

Pecunia [fr. *pecus*, Lat., cattle], properly money, but anciently cattle, and sometimes other goods as well as money.

Pecunia dicitur à pecus omnes enim veterum divitiæ in animalibus consistebant. Co. Litt. 207.—(Money (*pecunia*) is so called from cattle (*pecus*), because all the wealth of our ancestors consisted in cattle.) So chattels (cattle) means all tangible personalty.

Pecunia sepulchralis, money anciently paid to the priest at the opening of a grave for the good of the deceased's soul. See MORTUARY.

Pecuniary Causes, such as arise either from the withholding of ecclesiastical dues, or the doing or neglecting to do some act relating to the church whereby damage accrues to the plaintiff, to obtain satisfaction for which he is permitted to institute a suit in the spiritual court.

Pecuniary legacy, a testamentary gift of money.

Pedage, money given for the passing of foot or horse through any country.—*Spelm.*

Pedigree [fr. *per* and *degré*, Fr.—*Skinner*], genealogy; lineage; account of descent. Falsifying a pedigree upon which title does or may depend, is punishable under 22 & 23 Vict. c. 35, s. 24. As to the admissibility of hearsay evidence in questions of pedigree, see *Taylor on Evidence*, s. 571 *et seq.*

Pedis abscissio, cutting off a foot; a punishment anciently inflicted instead of death.—*Fleta*, l. 1, c. xxxviii.

Pedis possessio, an actual possession or foothold.

Pedlars, persons who travel about offering their goods or skill in handicraft for sale, between whom and hawkers there is the important *statutory* distinction that the hawker travels *with a horse*, whereas the pedlar does not. See HAWKERS AND PEDLARS, and Pedlars Act, 1871, 34 & 35 Vict. c. 96, whereby a certificate from a chief officer of police, etc., is required for acting as a pedlar.

Pedones, foot soldiers.

Peel's (Sir R.) Acts, 6 & 7 Vict. c. 37, otherwise called 'The New Parishes Act,' amended by 7 & 8 Vict. c. 94, and 19 & 20 Vict. c. 104, making better provision for the spiritual care of populous parishes, by the establishment of district churches therein; and 7 & 8 Geo. IV. cc. 27—29, abolishing benefit of clergy, and otherwise amending the criminal law.

Peer, an equal; one of the same rank; a member of the House of Lords.

Peerage, the dignity of the lords, or peers of the realm. In what sense one individual can hold several peerages, may be seen from *Lord Fermoy's case*, 5 *H. L. Cases*, 716.

Peeress. Women may acquire peerages by creation (as the Baroness Burdett Coutts), descent (as where a peerage goes in the female as well as in the male line, to which line it is usually confined), or marriage, but they have never had the legislative power. The 20 Hen. VI. c. 9 declares that peeresses, either in their own right or by marriage, shall be tried before the same judicature as peers of the realm. This statute is said to be remarkable, as being the only instance of a legislative explanation of any part of Magna Charta. If a woman, noble in her own right, marry a commoner, she still remains noble, and shall be tried by her peers; but if she be only noble by marriage, then, by a second marriage with a commoner, she loses her dignity: for as by marriage it is gained, so by marriage it is also lost. Yet, if a duchess-dowager marry a baron, she continues a duchess still, and so forth; for all the nobility are *pares*, and therefore it is no degradation. A woman, noble in her own right or by her first marriage, marrying a commoner, communicates no rank or title to her husband.—1 *Inst.* 326.

Peers of Fees, vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed *peers of fees*, because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers.—*Cowel.*

Peers of the Realm, the nobility of the kingdom and lords of parliament, who are divided into dukes, marquises, earls, viscounts, and barons. They are called peers, because, although there is a distinction of dignity

among them, they are equal in all public actions, as in votes of parliament, and trial of any nobleman.—*Selden's Titles of Honour.*

Peers are created either by writ or by patent. The claim by prescription is founded upon the presumption that an ancestor of the claimant was created a peer by writ or patent which has been lost. The creation by writ, or the Queen's letter, is a summons to attend the House of Lords, by the style and title of that barony which the Queen is pleased to confer. That by patent is a royal grant to a subject of any dignity or degree of peerage. The creation by writ is the more ancient way, but a man is not ennobled thereby, unless he actually take his seat in the House of Lords; and some are of opinion that there must be at least two writs of summons and a sitting in two distinct parliaments to evidence an hereditary barony; and therefore the most usual, because the surest way, is to grant the dignity by patent, which enures to a man and his descendants, according to the limitations thereof, though he never himself make use of it. The eldest son of a peer is frequently called up to the House of Lords by writ of summons, in the name of his father's barony, because in that case there is no danger of his children losing the nobility in case he never takes his seat, for they will succeed to their grandfather. In cases of treason and felony, a nobleman is tried by his peers, but in mere misdemeanours, he is tried, like a commoner, by jury. He cannot be arrested in civil cases, but he is not exempted from arrest in criminal matters. A peer loses his nobility by death or attainder.—1 *Bl. Com.* 227.

During bankruptcy peers are disqualified from sitting or voting in the House of Lords. —34 & 35 *Vict.* c. 50.

Peine forte et dure (*the strong and hard pain*) [*peine* (or penance), probably a corrupted abbreviation of *prisone.*—3 *Bl. Com.* 325], a punishment, now happily abolished, by which a prisoner indicted for felony was compelled to put himself upon his trial. If, when arraigned, he stood mute, he was remanded to prison, and placed in a low dark chamber, and there laid on his back on the bare floor naked, unless where decency forbade; upon his body was placed as great a weight of iron as he could bear; on the first day he received no sustenance save three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison-door, and such was alternately his daily diet till he died or answered.—3 *Bl. Com.* 327; 2 *Reeves*, c. ix., 134; 4 *Steph. Com.*

By 7 & 8 Geo. IV. c. 28, s. 2, if a prisoner refuse to plead, the Court may order a plea of 'not guilty' to be entered.

Pela, a peal, pile, or fort.—*Cowel.*

Peles, issues arising from or out of a thing. —*Jacob.*

Pelfe or **Pelfre**, booty; also the personal effects of a felon convict.—*Cowel.*

Pellage, the custom or duty paid for skins of leather.

Pellicia, a pilch or surplice.—*Spelm.*

Pelliparius, a leatherseller or skinner.—*Jacob.*

Pellota, the ball of a foot.—4 *Inst.* 308.

Pells, Clerk of the, an officer in the Exchequer, who entered every seller's bill on the parchment-rolls, the roll of receipts, and the roll of disbursements. Abolished.

Pelt-wool, the wool pulled off the skin or pelt of dead sheep.—8 *Hen VI.* c. 22.

Pembrokeshire, originally a county palatine, but dispalatinated in the reign of Henry VIII.

Pen (Welsh), a high mountain.—*Cumd. Brit.*

Penal laws, those laws which prohibit an act, and impose a penalty for the commission of it. They are of three kinds: *pœna pecuniaria, pœna corporalis*, and *pœna exilii.*—*Cro. Jac.* 415.

Penal servitude, a punishment in the United Kingdom which by the Penal Servitude Act, 1853, 16 & 17 Vict. c. 92, has superseded transportation (see that title) beyond the seas; but is in all respects as to hard labour, etc., similar to it. It ranges in duration from three years to the life of the convict. See 16 & 17 Vict. c. 92; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47; 34 & 35 Vict. c. 112; 42 & 43 Vict. c. 55; and 54 & 55 Vict. c. 69.

The Criminal Law Consolidation Acts of 1861 frequently authorise a minimum term of three years' penal servitude. This minimum of *three* years was altered to *five* by the Penal Servitude Act, 1864, 27 & 28 Vict. c. 47, s. 2, but altered back to *three* by the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69. The minimum term of seven years in case of a previous conviction was also fixed by the same section of the Act of 1864, but that part of it was repealed by 42 & 43 Vict. c. 55, s. 1.

Penal statutes, those which impose penalties or punishments for an offence committed; they are construed strictly in favour of the person charged with the offence.

Penal statutes, Actions on. The penalties or forfeitures under these statutes are generally made recoverable by the Crown, or the party aggrieved, or a common informer, as the case may be. See 7 Hen. VIII. c. 3; 31 Eliz. c. 3; 18 Eliz. c. 5; 21 Jac. I. c. 4;

and 3 & 4 Wm. IV. c. 42, s. 3. And see 3 *Steph. Com.*, 7th ed., 434, 479.

This remedy is generally designated a penal action; or where one part of the forfeiture is given to the Crown and the other part to the informer, a popular or *qui tam* action.

Penalty, where a certain gross sum of money is reserved on an agreement to be paid in case of the non-performance of such agreement, it is generally to be considered as a penalty, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the actual damages occasioned by the breach of contract.

Equity will decree to the obligee of a bond interest beyond the penalty, wherever the obligor has unreasonably deprived him of his power to enforce it until it is no longer adequate to secure his rights.—2 *Story's Eq. Jurisp.* 497. See LIQUIDATED DAMAGES.

Penance [fr. *pœnitentia*, Lat.], an ecclesiastical punishment used in the discipline of the primitive church, which affected the body of the penitent, by which he was obliged to give a public satisfaction to the church for the scandal he had given by his evil example. See *Godolph. Repert. Canon. App.* 18.

Pendente lite (*during litigation.*)

Administration *pendente lite* is sometimes granted when an action is commenced in the Probate Court touching the validity of a will.

An injunction will be granted to restrain a party from making vexatious alienations of real property, *pendente lite.*

Pendente lite, Alimony. See ALIMONY.

Pendente lite nihil innovetur. Co. Litt. 344.—(During a litigation nothing new should be introduced.)

Pendentes, ungathered fruits.—*Civ. Law.*

Penerarius, an ensign-bearer.—*Cowel.*

Penitentiary-houses, prisons where criminals are confined to hard labour.—19 *Geo. III.* c. 74. See GAOL.

Pennon, a standard, banner, or ensign carried in war.

Penny Postage Act. See 3 & 4 Vict. c. 96.

Pennyweight, twenty-four grains.

Pensam, the full weight of twenty ounces.

Pension, an annual allowance made to any one, usually in consideration of past services.

By 6 Anne c. 7, and 1 Geo. I. st. 2, c. 56, no person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting in the House of Commons.

As to the assignment and payment of pensions, see 47 Geo. III. sess. 2, c. 25; 2 & 3 Vict. c. 51; 28 & 29 Vict. c. 73, ss. 4, 5. And as to the commutation of pensions, see 32 & 33 Vict. c. 32; and 34 & 35 Vict. c. 36; 35 & 36 Vict. c. 83; and see further SUPERANNUATION ACTS.

Taking a pension from any foreign prince, without the consent of the Crown, is an offence against the government, and punishable by fine and imprisonment.

Pension of churches, certain sums of money paid to clergymen in lieu of tithes. A spiritual person may sue in the spiritual court for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as if one grant an annuity to a parson he must sue for it in the temporal courts.—*Cro. Eliz.* 675.

Pension of the Inns of Court, an annual payment made by each member to the houses. Also, that which in the two Temples is called a parliament, and in Lincoln's Inn a council, is, in Gray's Inn, termed a pension, being an assembly of the benchers, to consult upon the affairs of the society. See INNS OF COURT.

Pensioner, one who is supported by an allowance at the will of another; a dependant; he who receives an annuity from government without filling any office.

2. A band of gentlemen who attend as a guard on the royal person. It was instituted A.D. 1539; each gentleman has an allowance of 150*l.* *per annum*, and two horses. This band is now called the Honourable Body of Gentlemen-at-Arms.

3. A member of a college at Cambridge who is not on the foundation.

Pension-writ, a process formerly issued against a member of an Inn of Court, when he was in arrear for pensions, commons, or other duties, etc.—*Cowel.*

Pentecostals, pious oblations made at the feast of Pentecost by parishioners to their priests; and sometimes by inferior churches or parishes to the principal mother churches. They are also called Whitsun-farthings.

Pentonville Prison, a place provided for the confinement of male convicts under sentence of penal servitude, until otherwise disposed of. It is under 'The Directors of Convict Prisons,' who appoint officers, consisting of a governor, chaplain, medical officer, and others. They make annual reports to the Secretary of State as to the prison discipline and management, to be laid before parliament. —5 & 6 *Vict.* c. 29; 13 & 14 *Vict.* c. 39; 16 & 17 *Vict.* c. 99, s. 6; and 20 & 21 *Vict.* c. 3, s. 3.

Peon, a footman, a soldier, an inferior officer, a servant employed in the business of the revenue, police, or judicature.—*Indian.*

People [*peuple*, Fr.; *populo*, It.; *pueblo*,

Sp.; fr. *populus*, Lat.], the many, the multitude, the inhabitants of a nation, state, town, etc.; the commonalty or common folk, as distinguished from the higher classes; men; individuals.—*Richard. Dict.*

Per and Post. To come in the *per* is to claim by or through the person last entitled to an estate, as the heirs or assigns of the grantee: to come in in the *post* is to claim by a paramount and prior title, as the lord by escheat.

Perambulation, a travelling through or over.

Perambulation of parishes is to be made by the minister, churchwardens, and parishioners, by going round them once a year, in or about Ascension week; and the parishioners may well justify going over any man's land in their perambulation, according to usage, and it is said may abate all nuisances in their way.—*Cro. Eliz.* 441. Manors are also perambulated.—*Wheat. Com. Pr.* 234.

Perambulatione faciendâ, a writ which lay where any encroachments have been made by a neighbouring lord, etc., to the sheriff to perambulate or settle the bounds. Equity grants commissions to perambulate.

Actions upon writs of perambulation were authorised in Scotland, by the Act 1597, c. 79, to settle the bounds of disputed properties adjoining each other.

Perca, a perch of land, 16½ feet. See PERCH.

Per capita (*by number of individuals*), opposed to *per stirpes* (by *the number of families*); if a man die and leave all his goods 'among my grandsons,' having nine grandsons, one of whom was an only son, and the other eight brethren; then if the division be *per stirpes*, the only son shall take half the goods as representing one of his grandsire's two children; if the division be *per capita*, he shall take a ninth part only as being one of nine grandsons.

Percaptura, a place in a river properly banked for the better preserving and taking of fish.—*Par. Ant.* 120.

Perch, a measure of land, consisting of five yards and a half of the standard measure.

Per, Cui, and **Post,** writs of entry, now abolished.

Perdings, men of no substance.—*Leg. Hen. I.* c. 29.

Perdonatio utlagariæ, a pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterward of his own accord surrenders.—*Reg. Orig.* 28.

Perduellio, treason.—*Civ. Law.*

Peregrini, foreigners commorant or sojourning in Rome.—*Civ. Law.*

Peremption, a nonsuit, also a quashing or killing. See NONSUIT.

Peremptory [fr. *perimo*, Lat., to cut off], final and determinate.

Peremptory challenge, an arbitrary species of challenge to a certain number of jurors without showing any cause.

This privilege is granted to a prisoner in criminal cases, but denied to the Crown by 6 Geo. IV. c. 50. In treason a prisoner can challenge without cause thirty-five jurors, and in felony twenty. See also 7 & 8 Geo. IV. c. 28, s. 3. and 4 *Steph. Com.*

Peremptory day, a precise time when certain business by rule of court ought to be spoken to; but if it cannot be spoken to then, the Court, at the prayer of the party concerned, will give a further day without prejudice to him.

Peremptory mandamus, a second *mandamus*, which issues where the return which has been made to the first writ is found either insufficient in law or false in fact. To this writ no other return will be admitted, but a certificate of perfect obedience and due execution. See MANDAMUS; and 3 *Steph. Com.*, 7th ed., 632.

Peremptory order for time to plead. A further time to plead is after such an order usually refused. But see 1 *Chit. Arch. Prac.*, 12th ed., 250.

Peremptory paper, a court paper containing a list of all motions, etc., which are to be disposed of before any other business.

Peremptory pleas, or **pleas in bar,** those which were founded on some matter tending to impeach the right of action.

Peremptory Rule. Formerly a defendant might obtain a peremptory rule to declare within a certain time, absolute in the first instance. This was abolished by C. L. P. Act, 1852, s. 53, and a four-day notice substituted. See now PLEADING; STATEMENT OF DEFENCE.

Peremptory undertaking. The Court will, in some cases, set aside a judgment for not proceeding to trial, upon payment of costs, and a peremptory undertaking to try at the next sittings or assizes, especially where the plaintiff had been delayed on account of his witnesses, or the like.—2 *Ch. Arch. Pr.*

Peremptory writ, a class of original writs.

Perengaria. See ANGARIA.

Per eundem is commonly used to express, 'by, or from the mouth of, the same judge.'

Per eundem, in eâdem [*audi, 'causâ'*], by the same judge, in the same case.

Perfect trust, an executed trust. See EXECUTED TRUST.

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum. Hob. 151.—

(That is perfect which wants nothing, according to the measure of its perfection or nature.)

Periculum rei venditæ, nondum traditæ, est emptoris.—(The risk of a thing sold, and not yet delivered, is the purchaser's.)

Perils of the sea. They are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at all events to the injured ship. It was held by the House of Lords in *Hamilton, Fraser, & Co. v. Pandorf & Co.*, 12 *App. Cas.* 518, that, where rats gnawed a hole in a pipe on board ship, whereby sea-water escaped and damaged a cargo of rice, without neglect or default on the part of the ship-owners or their servants, the gnawing of the rats constituted a peril of the sea. The word *peril*, like *periculum*, Lat., from which it is derived, is in itself ambiguous, and sometimes denotes the risk of inevitable mischance, and sometimes the danger arising from the want of due circumpection.—*Jones on Bailments*, 98. Consult 2 *Arnold on Marine Insurance*, 6th ed., p. 755.

Per incuriam, through want of care.

Perindinare, to stay, remain, or abide in a place.

Perinde valere, a dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is, *de facto*, admitted to it.—*Gibs.* 87; 25 *Hen. VIII.* c. 21; *Cowel.*

Per infortunium, by mischance.

Periodical Payments, Apportionment of. See APPORTIONMENT.

Periphrasis, circumlocution; use of many words to express the sense of one.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. 3 Inst. 166.—(They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.)

Perishable goods, goods which decay and lose their value if not consumed soon—fish, fruit, and the like. By Ord. LX., r. 2, such goods, when the subject of an action, may, by order of the court or a judge, be sold.

Perjury, when a lawful oath is administered by one that has authority in a judicial proceeding, and the witness swears falsely in a matter material to the issue; in some cases a false oath taken not in judicial proceedings amounts to perjury, and is visited by penalties.

A mere voluntary oath, that is, an oath administered in a case for which the law has not provided, is not one on which perjury can be assigned; for as such a proceeding is not required, so neither is it protected by the law. But voluntary oaths are now prohibited by 5 & 6 Wm. IV. c. 62, which provides that a certain form of declaration may be substituted for them, and that any party falsely making such declaration shall be guilty of a misdemeanour.

It is necessary, in order to constitute the offence of perjury:—(1) That the false oath be taken wilfully, i.e., with some degree of deliberation, and *malo animo*. It must also be positive and absolute, not merely owing to surprise or inadvertency, or a mistake of the true state of the question. (2) The oath must be taken either in a judicial proceeding, or in some other public proceeding of the like nature, except in certain cases expressly provided for by statute. (3) It must be taken before persons lawfully authorised to administer it. (4) It must be taken by a person sworn to depose the truth. (5) It is not material that the person who swears it in truth knows nothing of it, if he takes a false oath that he knows it to be true. (6) It must be taken absolutely and directly, therefore if a man only swears as he thinks, remembers, or believes, he is not guilty of perjury; but, if he swears that he believes a fact to be true, which he knows to be false, he is guilty of perjury. (7) The thing sworn ought to be in some way material, for if it be wholly foreign to the purpose, or immaterial, and neither pertinent to the matter in question nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give credit to the substantial part of the evidence, it cannot amount to perjury, because it is wholly insignificant. (8) It is not material whether the false oath were credited or not, or whether the party in whose prejudice it was taken was in the event damaged by it, for the prosecution is not grounded on the damage to the party, but on abuse of public justice.

Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal.

In prosecutions for perjury, some one or more of the assignments of perjury must be proved by two witnesses, or by one witness, and the proof of other material and relevant facts confirming his testimony. Where the perjury consists in the defendant's having contradicted what he swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction.

By 14 & 15 Vict. c. 100, s. 19, any judge or justice of the peace may direct any person appearing to him to have been guilty of perjury in any proceedings before him to be

prosecuted for such perjury, 'in case there shall appear to him a reasonable cause for such prosecution,' and may commit the party, or bind him over to appear and take his trial, etc.

Perjury and subornation of perjury are both misdemeanours, and their punishment at Common Law is by fine and imprisonment. But additional punishments have been enacted. By the still unrepealed 5 Eliz. c. 9 (made perpetual by 29 Eliz. c. 5, s. 2, and 21 Jac. I. c. 28, s. 8), the convicted perjurer may be imprisoned six months and fined 20*l.*, and for subornation fined 40*l.*, and in default imprisoned for six months. By 2 Geo. II. c. 25, s. 2, he may be sent to hard labour for seven years; or to penal servitude for not more than seven, nor less than three years (16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47, s. 2; and 54 & 55 Vict. c. 69). And by 3 Geo. IV. c. 114, the offender may be sentenced to imprisonment with hard labour for any term for which he may be imprisoned, either in addition to or in lieu of any other punishment.

By 22 & 23 Vict. c. 17, s. 1, no indictment for perjury, subornation of perjury, etc., is to be presented or found, unless the person presenting it has been bound to prosecute or give evidence, or the accused has been in custody, or bound to appear and answer to the indictment, or unless the indictment be preferred by the direction or with the consent, in writing, of a judge of the superior courts, or of the Attorney or Solicitor-General, etc.

As to taking false affirmations, declarations, etc., see 9 Geo. IV. c. 32; 3 & 4 Wm. IV. cc. 49, 82; 1 & 2 Vict. c. 77; 17 & 18 Vict. c. 125, ss. 20, 21, 103; 24 & 25 Vict. c. 26; and 32 & 33 Vict. c. 68, s. 4.

If perjury be committed in a spiritual cause, the spiritual judge has authority to inflict canonical punishment, and prohibition will not go.

As to the evidence by which a charge of perjury must be supported, consult *Archbold's Criminal Evidence.*

Perkins, the author of the '*profitable boke*' on the learning of conveyancing; as valuable a performance as any, perhaps, of the reign of Hen. VIII. This was first printed in 1532, with the following title: 'Incipit perutilis Tractatus Magistri Jo. Perkins Interioris Templi Socii, etc.' This book is in French. —4 *Reeves*, c. XXX., 120.

Permissions, negations of law, arising either from the law's silence, or its express declaration.—*Ruth. Nat. Law*, bk. 1. ch. 1.

Permissive use, a passive use which was resorted to before the Statute of Uses, in order to avoid a harsh law, as that of mortmain or a feudal forfeiture; it was a mere invention in order to evade the law by secrecy, as a conveyance to A. to the use of B. A. simply held the possession, and B. enjoyed the profits of the estate. See USES.

Permissive waste, the neglect of necessary repairs. See WASTE.

Permit, a license or instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting their removal from some specified place to another.

Permutation, or **Barter**, the exchange of one movable subject for another.

Permutatione, etc., a writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.—*Reg. Orig.* 307.

Per my et per tout (*by the half and the whole*). Joint tenants, by reason of the combination of entirety of interest with the power of transferring in equal shares, are said to be seised *per my et per tout.* See 1 *Steph. Com.*, bk. 2., pt. 1., ch. 8.

Pernancy [fr. *prendre*, Fr., to take], the taking or receiving of anything, e.g., tithes.

Pernor, he who receives the profits of lands, etc.; the *cestui que use.*—1 *Rep.* 123; *Co. Litt.* 589 *b.*; *Cowel.*

Per pais, Trial, trial by the country (i.e., by jury). See 3 *Steph. Com.*

Perpars, a part of the inheritance.—*Fleta.*

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet. Bacon.—(It is an everlasting law, that no positive human law shall be perpetual; and any part of an enactment which purports to admit of no repeal, is void from the first.)

Perpetual curate, a minister in holy orders, who is charged with the permanent care of a parochial church, which, although an appropriation, has no endowed vicar. He is entitled to emolument for his services.

By 1 & 2 Wm. IV. c. 38, churches or chapels built and endowed by particular individuals shall have districts assigned to them, and be deemed perpetual curacies, and the right of nomination thereto shall be vested in the person so building and endowing. See 2 *Steph. Com.*

Perpetual injunction, opposed to an injunction *ad interim*; an injunction which finally disposes of the suit, and is indefinite in point of time. See INJUNCTION.

Perpetuating testimony. When evidence is likely to be irrecoverably lost, by reason of a witness being old, or infirm, or going abroad before the matter to which it relates can be judicially investigated, equity will, by antici-

pation, preserve and perpetuate such evidence in order to prevent a failure of justice. Also any person who would become entitled, upon the happening of any future event, to any honour, title, or office, or to any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such future event, may obtain the perpetuation of any testimony which may be material for establishing his claims (5 & 6 Vict. c. 69).

This jurisdiction emanates from the anxiety of equity to ward off litigation, where it may be oppressively exercised, by preserving the evidence in maintenance of an unpossessed legal right, or where an adversary with an apparent right is postponing his attack against the lawful possessor, until the death of witnesses who can give evidence against his claim. A common case is that of a devisee establishing a will against the heir-at-law, by compelling him to litigate the question at once or not at all, and by perpetuating the evidence of the attesting witnesses. It is not necessary that the devise should be coupled with a trust. Read *Boyse* v. *Rossborough*, 2 *Eq. Rep.* 675 (1854). See DE BENE ESSE.

The suit for declaration of legitimacy is in the nature of a suit for perpetuating testimony. See LEGITIMACY DECLARATION ACTS.

The 30 & 31 Vict. c. 35, s. 6, provides, in criminal cases, for the taking of the depositions of persons dangerously ill and not likely to recover, and the making of the same evidence in certain events after the death of such persons.

Perpetuity, unlimited duration; exemption from intermission or ceasing, where though all who have interest should join in a covenant, they could not bar or pass the estate. It is odious in law, destructive to the commonwealth, and an impediment to commerce, by preventing the wholesome circulation of property. Consult *Lewis on the Law of Perpetuity*.

The rule against perpetuities, or the doctrine of remoteness, applies to the *corpus* of property, whether real or personal, and whether limited by deed or will, and may be thus stated: that the vesting of property cannot be postponed, or the alienation of it restricted, beyond any number of lives in being [whether interested or not is quite immaterial (*Duke of Norfolk's case*, 3 *Cha. Ca.* 1; 33 Car. II., called 'the Case of Perpetuities'; and *Stephens* v. *Stephens*, *Ca. tem. Talb.* 228 (1736))], and twenty-one years from the death of the surviving life, absolutely and wholly independent of infancy (i.e., a gross term of twenty-one years), together with one or two periods of actually existing gestation.

Any word or phrase, however sounding in remoteness, will not of itself invalidate a limitation; there must exist an illegal remoteness in the contingency contemplated by the limitation, as also a possibility of such a contingency operating in fact remotely, in order to render a limitation void. For example, a limitation to A. on the death of B. without issue sounds invalid for remoteness, but if B. be already dead, issueless, remoteness does not really exist, and the limitation to A. is valid.

The rule requires a limitation, whether of an absolute or partial interest, positively and necessarily to vest within the period prescribed, and not to depend upon a mere possibility.

If the rule be exceeded, the limitation is wholly void and cannot be validated by the happening of any event subsequently to its creation. When a limitation might have included objects too remote it is invalid, notwithstanding the objects may actually be ascertained within the verge of the rule.

The period presented by the rule is to be computed from the date or delivery of the deed creating the limitations; or from the testator's death, when given by will, that being the period at which a will takes effect.

The following limitations are exempt from the perpetuity rule:—

(1) A limitation expectant upon an entail, for it can be destroyed by barring the entail, but should the entail be preceded by a term for years, and its trusts be postponed until the failure of the issue in tail, they will be void, because limited to arise on an indefinite failure of issue.

(2) Limitations, the nature of whose subject matter is such as to render it necessary for them to take effect, if at all, within the period prescribed by the perpetuity rule.

(3) Limitations in mortmain, and to charitable uses. Church property is not embraced by the law of perpetuity.

(4) Perpetuities allowed or created by Act of Parliament, such as Blenheim, settled upon the renowned Duke of Marlborough and his posterity (3 & 4 Anne c. 6; 4 Anne c. 4; and 5 Anne c. 3); and Strathfieldsaye on the great Duke of Wellington and his descendants (41 Geo. III. c. 59; 42 Geo. III. c. 113; and 54 Geo. III. c. 161).

For the detailed learning of this abstruse doctrine, see *Lewis on Perp.*, and *Supp.*; and *Catlin* v. *Brown*, 1 *Eq. Rep.* 550 (1853).

Compare also title 'ACCUMULATION.'

Per Proc. By procuration, which see.

Per quæ servitia, a judicial writ issuing

from the note of a fine; it lay for cognisee of a manor, seigniory, chief rent, or other services, to compel him who was tenant of the land as to the time of the note of the fine levied, to attorn unto him.—*O. N. B.* 155.

Perquisite, something gained by a place or office over and above the stated wages; anything gotten by industry or purchase with money different from that which descends from a father or ancestor; also, fines of copyholds, heriots, amerciaments, etc.

Perquisitor, a searcher.

Per quod (*whereby*), a phrase formerly made use of by a plaintiff in a declaration alleging special damage, without which an action would not have been maintainable.

Per quod consortium amisit [Lat.] (*whereby he lost the benefit of her society*). An allegation of special damage introduced into the declaration in actions by husbands for injuries to their wives, as for beating, false imprisonment, etc.

Per quod servitium amisit [Lat.] (*whereby he lost the benefit of her service*). An allegation analogous to the above in an action for seduction. See SEDUCTION.

Per rationes pervenitur ad legitimum rationem. Litt. s. 386.—(By reasoning we come to true reason.)

Per se, by itself, taken alone.

Person, in an Act of Parliament passed after 1st January, 1890, includes 'any body of persons corporate or unincorporate.'—*Interpretation Act*, 1889, s. 19.

Person, indecent exposure of, an offence against the public morality, punishable by fine or imprisonment, or both, with hard labour, at the Court's discretion.—14 & 15 *Vict.* c. 100, s. 29.

Persona, anybody capable of having and becoming subject to rights.—*Civ. Law.* See *Sand. Just.*, 7th ed., 13.

Persona conjuncta æquiparatur interesse proprio. Bacon.—(The interest of a man's kindred is equivalent to his own.)

Persona ecclesiæ, the parson or personation of the church.

Personâ regis mergitur persona ducis. Jenk. Cent. 160.—(The person of duke merges in that of king.)

Personable, the being able to hold or maintain a plea in Court; also, capacity to take anything granted or given.—*Plowd.*

Personal, any movable thing, either living or dead.

Personal action, one brought for the specific recovery of goods and chattels, or for damages or other redress for breach of contract, or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments only excepted. The term is often used in a narrower sense to express an action for injury to the person, as for slander, assault, injury by accident, as distinguished from injury to property. It is in this sense that it is said, '*Actio personalis moritur cum persona.*' See that title, and EXECUTOR, and NEGLIGENCE.

Personal Acts of Parliament, statutes confined to particular persons, e.g., authorising a person to change his name, etc.

Personal Chattels, goods, money, or movables.

Personal identity. See IDENTITY.

Personal property, money, goods, leases for years, however long, and other chattels, not comprehended under the definition of real property, such as land, houses, and leases for lives, however short, whatever wants either the duration or the real. They are distributed into chattels real and chattels personal. See CHATTELS. Property in personalty is either in possession, which is absolute, where a person has such an exclusive right in the thing that it cannot cease to be his without his own act or default, or qualified, arising where the subject is incapable of absolute ownership, or from the peculiar circumstances of the owners; or, in action, where a man has not the actual occupation of the thing, but only a right to it, arising upon some contract, and recoverable by an action at law. (See now Jud. Act, 1873, s. 25 (6).) The property of chattels personal is liable to remainders expectant on estates for life; to joint-tenancy, and to tenancy-in-common.

The title to things personal may be acquired or lost by occupancy, prerogative, forfeiture, custom, succession, marriage, judgment, gift or grant, invention, contract, bankruptcy, testament, and administration. —2 *Bl. Com.* 384.

Any person may assign personal property, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.—22 & 23 *Vict.* c. 35, s. 21. See also CHOSE.

Personal representatives, executors or administrators.—2 *Steph. Com.*

Personal rights, the rights of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.

Personal tithes, those that are paid out of such profits as come by the labour of a man's person, as by buying and selling, gains of merchandise, handicrafts, etc.

Personality, said of an action when it is brought against the right person.—*O. N. B.* 92.

Personality of Laws. All laws concerning

the condition, state, and capacity of persons, as distinguished from the reality of laws, which means all laws concerning property or things. Whenever foreign jurists wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.

Livermore uses the words *personality* and *reality*. Henry, the words *personality* and *realty*. Story preferred the former, as least likely to lead to mistakes, as *personalty* in our law is confined to personal estate, and *realty* to real estate.—*Confl. of Laws*, 23.

Personalty, personal property, as money, shares in a public company, cattle, furniture, leaseholds,—as distinguished from realty, or real property, as freehold land or houses; that which relates to the person.

Personation, pretending to be some other particular person.

Personation in order to obtain property is made felony by 'The False Personation Act, 1874,' 37 & 38 Vict. c. 36. Personation of a voter is made felony by the Ballot Act, 1872, and personation of a master for the purpose of giving a false character to a servant is a misdemeanour, by 32 Geo. III. c. 56.

Perspicua vera non sunt probanda. Co. Litt. 16.—(Plain truths need not be proved.)

Per stirpes (*by the right of representation*—literally, *according to the stocks*). See PER CAPITA.

Perticata terræ, the fourth part of an acre.—*Cowel.*

Perticulas, a pittance; a small portion of alms or victuals. Also, certain poor scholars of the Isle of Man.—*Cowel.*

Pertinents, appurtenants.—*Scotch term.*

Per totam curiam, by the voice or judgment of the whole Court.

Perturbatrix, a woman who breaks the peace.

Per varios actus legem experientia fecit. 4 Inst. 50.—(By various acts experience framed the law.)

Per verba de futuro [tempore] **Per verba de præsenti** [tempore], a contract of marriage by words. See MARRIAGE.

Perverse verdict, a verdict whereby the jury refuse to follow the direction of the judge on a point of law. See NEW TRIAL.

Pervise, the palace-yard at Westminster. —*Somner.*

Pesa, a weight of 256 lb.—*Cowel.*

Pesage, a custom or duty paid for weighing merchandise or other goods.—*Cowel.*

Peshcush, a present, particularly to government, in consideration of an appointment, or as an acknowledgment of a tenure. Also tribute, fine, quit-rent, or advance or stipulated revenues.—*Indian.*

Peshura, Paishura, guide, leader, the prime minister of the Mahratta government.—*Ibid.*

Pessimi exempli, of the worst example.

Pessona, mast of oaks, etc., or money taken for mast, or feeding hogs.—*Cowel.*

Pessurable, Pestarble, or **Pestarable wares**, merchandise which takes up a good deal of room in a ship.—*Cowel.*

Peter-pence, an ancient levy or tax of a penny on each house throughout England paid to the pope. It was called *Peter-pence*, because collected on the day of St. Peter, *ad vincula*; by the Saxons it was called *Rome-feoh*, *Rome-scot*, and *Rome pennying*, because collected and sent to Rome; and lastly, it was called *hearth-money*, because every dwelling house was liable to it, and every religious house, the Abbey of St. Albans alone excepted.

It was not intended as a tribute to the pope, but chiefly for the support of the English school or college at Rome; the popes, however, shared it with the college, and at length found means to appropriate it to themselves.

At first it was only an occasional contribution, but it became at last a standing tax; being established by three laws of King Canute, Edward the Confessor, and the Conqueror. Edward III. first forbade the payment, but it soon after returned, and continued to the time of Henry VIII., when Polydore Vergil resided here as the pope's receiver-general. It was abolished under that prince, and restored again under Philip and Mary, but was finally prohibited under Queen Elizabeth.—*Chambers' Cyc.*

Petit Cape. See CAPE.

Petitio, a count or declaration.—*Glanv.*

Petition, a supplication made by an inferior to a superior, having jurisdiction to grant redress.

The subject has a right to petition the Sovereign, or the two Houses of Parliament, and all commitments and prosecutions for such petitioning are declared by the Bill of Rights (see BILL OF RIGHTS) to be illegal.

But by 13 Car. 2, st. 1, c. 5, prior in date to the Bill of Rights, it was enacted that not more than twenty names should be signed to a petition to the Crown or either House of Parliament for alteration of matters in Church or State, without the previous approval of the contents by three justices or the majority of a grand jury; and further, that no petition should be presented by a company of more than ten persons.

There are several regulations respecting petitions to Parliament, which if neglected in any one particular, will prevent their reception. For instance, signatures or marks must be original, not copies nor signatures of agents on behalf of others; no chairman of a public meeting can sign for the whole meeting (though the common seal of a corporation is received as the petition of the whole corporate body). In the Chancery Division of the High Court, petitions (as to which see R. S. C. 1883, Ord. LII., r. 16, *et seq.*), are used for getting money out of court, and a variety of other matters.

In bankruptcy, proceedings are commenced by one or more creditors of the debtor filing a petition in the Court of Bankruptcy, praying that the debtor may be adjudged bankrupt. See ACT OF BANKRUPTCY.

Divorce and matrimonial suits, and suits instituted under the Legitimacy Declaration Act, are commenced by petition.

The mode of obtaining redress for an improper election of a member of Parliament is also by petition, formerly to the House of Commons, but under the temporary Parliamentary Elections Act, 1868, 31 & 32 Vict. c. 125, as amended by subsequent Acts, now to two judges of the Queen's Bench Division of the High Court. Municipal Election Petitions are tried by a barrister under the Municipal Corporations Act, 1882.

Petition de droit (Petition of right), one of the Common Law methods of obtaining possession or restitution from the Crown of either real or personal property, or compensation in damages for breach of contract. It is said to owe its origin to Edward I.

By 23 & 24 Vict. c. 34 (commonly called Bovill's Act), the procedure on a petition of right is assimilated as far as practicable to the course of an ordinary action. A judgment that the suppliant is entitled to the whole or some portion of the relief sought by his petition, or to such other relief as the Court may think right, has the same effect as a judgment of *amoveas manus*. Costs are made payable both to and by the Crown, and nothing in the Act is to prevent any suppliant from proceeding as he might have done before the Act passed.

Petition of Right, 3 Car. I. c. 1, a parliamentary declaration of the liberties of the people, assented to by Charles I. in the beginning of his reign.

In the first Parliament of Charles I., which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject which they alleged had been violated, should have been solemnly recognised by a legislative enactment. With this view they framed a petition to the king, in which, after reciting various statutes by which their rights and privileges were recognised, they prayed the king 'that no man be compelled to make or yield any gift, loan, benevolence, tax, or suchlike charge, without common consent by Act of Parliament; that none be called upon to make answer so to do; that freemen be imprisoned or detained only by the law of the land, or by due process of law, and not by the king's special command, without any charge; that persons be not compelled to receive soldiers and mariners into their houses against the laws and customs of the realm; that commissions for proceeding by martial law may be revoked: all which they pray as their rights and liberties, according to the laws and statutes of the realm.'

To this petition the king at first sent an evasive answer: 'The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs and oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative.' This answer being rejected as unsatisfactory, the king at last pronounced the formal words of unqualified assent, *Soit droit fait comme est desiré*, 'Let right be done as it is desired' (3 Car. I. c. 1). Notwithstanding this, however, the ministers of the Crown caused the petition to be printed and circulated with the first insufficient answer.

Petitioning Creditor, one who applies for an adjudication in bankruptcy against his debtor. See Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 6, whereby the creditor's debt must be a liquidated one for 50*l.* at least, and grounded upon an act of bankruptcy (see ACT OF BANKRUPTCY) having occurred within three months before the presentation of the petition.

Petitio principii, begging the question, which is the taking of a thing for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any inferences ought to be drawn from it. For a discussion on the question, 'Is the syllogism a *petitio principii*?' see 1 *Mill's Log.*, b. 2, c. 3, s. 1, p. 206.

Petit jury, a jury in criminal cases who try the bills found by the grand jury.

Petit larceny, stealing of goods to the value of a shilling or under. The distinction between grand and petit larceny was abolished by 7 & 8 Geo. IV. c. 29, s. 2.

Petit serjeanty, holding lands of the Crown

by the service of rendering annually some small implement of war, as a bow, a sword, a lance, an arrow, flag, or the like. See TENURE.

Petit treason, treason of a lesser kind, as if a servant killed his master, a wife her husband, a secular or religious man his prelate. But by 9 Geo. IV. c. 31, s. 2, every offence which, before the passing of the Act, would have amounted to petit treason, shall be deemed murder only. See 24 & 25 Vict. c. 100, s. 8; 4 *Steph. Com.*

Peto's Act, 13 & 14 Vict. c. 28, whereby property conveyed for religious or charitable purposes vests in the trustee, etc., from time to time, without any further conveyance, etc.; amended by the Trustees Appointment Act, 1890, 53 & 54 Vict. c. 19, by its extension to societies of associated congregations, such as those of the Wesleyan Methodists, to which body it was held, *in re Hoghton Chapel*, 2 *W. R.* 631, not to apply, and in other particulars.

Petra, a stone weight.—*Cowel.*

Petroleum. The landing, carriage, and storage of petroleum, a highly inflammable oil, is regulated by the Petroleum Act, 1871, 34 & 35 Vict. c. 105 (repealing 25 & 26 Vict. c. 66; 31 & 32 Vict. c. 56), amended and changed from a temporary to a perpetual Act by the Petroleum Act, 1879, 42 & 43 Vict. c. 47. The hawking of petroleum is regulated by the Petroleum (Hawkers) Act, 1881, 44 & 45 Vict. c. 67. See also EXPLOSIVE SUBSTANCES.

Pettifogger [fr. *petit*, Fr., little, and *vogueur*, a rower], a dishonest lawyer in a mean way of business.—*Cant term.*

Petty-bag Office, an office belonging to the Common Law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that court, and for process and proceedings by extents on statutes, recognisances, *ad quod damnum*, *scire facias* to repel letters-patent, etc.—*Termes de la Ley.* The term is derived from the little bag (*parva baga*), in which original writs relating to the business of the Crown were in ancient times kept.

By 37 & 38 Vict. c. 81, s. 5, provision was made for the abolition of the office of Clerk of the Petty Bag, and the transfer of his duties, and in 1888, the last holder of the office dying, it ceased to exist.

The Common Law jurisdiction of the Court of Chancery is now transferred to the High Court of Justice (Jud. Act, 1873, s. 16).

Petty Constables, inferior officers in every town and parish, subordinate to the high constable of the hundred. See CONSTABLE.

Petty jury, see PETIT JURY.

Petty sessions, sittings of justices of the peace, empowered by a series of particular statutes relating to particular offences, and also by the Summary Jurisdiction Act, 1879, relating to juvenile offenders and adults pleading guilty, to try in a summary way, and without jury, certain minor offences. As to Ireland, see 14 & 15 Vict. c. 93; 21 & 22 Vict. c. 100; 26 & 27 Vict. c. 96. There is an appeal from petty sessions both on questions of law and fact to quarter sessions under the Summary Jurisdiction Act, 1879, and by case on a point of law only to the High Court. See 20 & 21 Vict. c. 43, Judicature Act, 1873, s. 45; and Summary Jurisdiction Act, 1879.

In an Act of Parliament the expression 'petty sessional court' means 'a court of summary jurisdiction, consisting of two or more justices, sitting in a petty sessional court-house,' and includes 'any stipendiary magistrate when sitting in a court-house or place at which he is authorised to do alone any act authorised to be done by more than one justice of the peace.'—*Interpretation Act*, 1889, 52 & 53 *Vict.* c. 32, s. 13, subs. 12.

Pew [fr. *puye*, Dut.; *appui*, Fr.], an enclosed seat in a church. It is somewhat in the nature of an heirloom, and may descend by immemorial custom, without any ecclesiastical concurrence, from an ancestor to his heir. Consult *Cripps's Law of the Church and Clergy*, 5th ed., 467.

The right to sit in a particular pew in the church arises either from prescription, as appurtenant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription. All other pews and seats in the body of a church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein. See 3 *Steph. Com.*; 3 *Hagg. Ec. Rep.* 733; 1 *Phil. Rep.* 324. And see 19 & 20 Vict. c. 104, ss. 5—8; and 32 & 33 Vict. c. 94.

Pharmaceutical Society of Great Britain, as to examinations by, see 15 & 16 Vict. c. 56; and see 31 & 32 Vict. c. 141, and 35 & 36 Vict. c. 74. A similar society is formed for Ireland by 38 and 39 Vict. c. 57.

Pharmacopœia (British), a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed, published by the Medical Council, under the Medical Act, 1858, 21 & 22 Vict. c. 90, s. 54, as amended by 25 & 26 Vict. c. 91.

Pharmacy Acts, Act of 1852, 15 & 16 Vict. c. 56, and Act of 1868, 31 & 32 Vict.

c. 121, regulating the examination, etc., of chemists by the Pharmaceutical Society. The Act of 1868 also regulates the sale of poison. See POISON.

Pharos, a watch-tower, or sea-mark, which cannot be erected without lawful warrant and authority.—3 *Inst.* 204.

Phatuk, a gaol or prison.—*Indian.*

Pheasant, a fowl of warren. See GAME.

Photographs, as to copyright in, see 25 & 26 Vict. c. 68; and see COPYRIGHT.

Phylasist [fr. φυλάσσω, Gk., to keep], a jailer.

Physician, one who professes the art of healing.

The necessity of placing under supervision the practitioners of physic and surgery appears early in the statute-book; for by the still unrepealed 3 Hen. VIII. c. 1, it is enacted, that no person within London or seven miles thereof, shall practise as a physician or surgeon without examination and license of the Bishop of London or Dean of St. Paul's (duly assisted by the faculty); or beyond these limits without license from the bishop of his diocese or his vicar-general similarly assisted, saving the privileges of the Universities of Cambridge and Oxford. The superintendence of the bishops was taken away by a royal charter, dated 23rd Sept. 10 Hen. VIII., which incorporated the physicians. By 14 & 15 Hen. VIII. c. 5, this charter was confirmed, and a perpetual college of physicians established, with a constitution of eight elects, etc. The subsequent history of the college is sufficiently traced in 23 & 24 Vict. c. 66, which provides for the style of the new charters allowed to be granted by the Medical Act, 1858, 21 & 22 Vict. c. 90, s. 47. And see *Davies* v. *Makuna*, 29 *Ch. D.* 596.

Nothing disclosed to a physician in the course of his profession is privileged from inquiry in a court of justice. See CONFESSION.

As to action by physician for fees, see MEDICAL ACT.

Piacle [Lat. *piaculum*], an enormous crime. Obsolete.

Picaroon [fr. *picare*, Ital.], a robber; a plunderer.

Pickery, petty theft, or stealing things of small value.—*Bell's Scotch Law Dict.*

Pick of land, a narrow slip of land running into a corner.

Pickage [fr. *picagium*, Low Lat.], money paid at fairs for breaking ground for booths.

Pick-lock, an instrument by which locks are opened without a key.

Pick-pocket, or **Pick-purse,** a thief who steals by putting his hand privately into the pocket or purse of another.

Pickle, Pycle, or **Pightel** [fr. *piccolo*, Ital.], a small parcel of land enclosed with a hedge, which in some countries is called a pingle.—*Encyc. Lond.*

Piedpoudre, Court of [*curia pedis pulverizati*, Lat., so called, either from the dusty feet of the suitors, or because justice is there done as speedily as dust can fall from the foot; or derived fr. *pied puidreaux*, Old Fr., a pedlar or petty chapman, such as resorts to fairs or markets], a court of record incident to every fair and market, though fallen into disuse, and now in a manner forgotten; of which the steward of him who owns, or has the toll of the market, is the judge; its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined, within the compass of one and the same day, unless the fair continue longer. The Court had cognizance of all matters of contract that could possibly arise within the precinct of that fair or market, and the plaintiff must make oath that the cause of action arose there. A writ of error lay in the nature of an appeal to the Courts at Westminster.—3 *Reeves*, c. 20., p. 293.

Pierage, the duty for maintaining piers and harbours.

Piers and Harbours. As to the formation, management, and maintenance of piers and harbours in Great Britain and Ireland, see 'The General Pier and Harbour Act, 1861' (24 & 25 Vict. c. 45), amended by 25 Vict. c. 19. See also 'The Harbours, Docks, and Piers Act, 1847' (10 & 11 Vict. c. 27), and 'The Harbours Transfer Act, 1862' (25 & 26 Vict. c. 69). See HARBOURS.

Pietantia, a pittance, a portion of victuals distributed to the members of a college.—*Encyc. Lond.*

Pietantiarius, the officer in a college who distributed the *pietantia*.—*Cowel.*

Pigeons. As to stealing, see 7 & 8 Geo. IV. c. 29, s. 33.

Pightel, a little enclosure.—*Cowel.*

Pignoration [fr. *pignus*, Lat.], the act of pledging.

Pignorative, Pignorary, pledging; pawning.

Pignus, a pledge or security for a debt or demand, is derived, says Gaius (*Dig.* 50, tit. 16, s. 238), fr. *pugnus*, '*quia quæ pignori dantur, manu traduntur.*' This is one of several instances of the failure of the Roman jurists when they attempted an etymological explanation of words. The element of *pignus* (*pig*) is contained in the word *pa(n)go* and its cognate forms. A pledge was called *pignus* when the possession of a thing was trans-

ferred to the pledgee, and *hypotheca*, when the pledgor retained it in his possession. See *Sand. Just.*, 7th ed., 51. See 2 *Steph. Com.*

Pigott's Act, 14 Geo. II. c. 20, relating to recoveries, which are abolished. Repealed by 30 & 31 Vict. c. 59.

Pila, that side of money which was called *pile*, because it was the side on which there was an impression of a church built on piles.—*Fleta*, lib. 1, c. 39.

Pilettus [fr. *pila*, Lat., a ball], in our ancient forest laws, an arrow which had a round knob a little above the head, to hinder it from going far into the mark.—*Cowel.*

Pileus supportationis (*the cap of maintenance*).—*Cowel.*

Pilferer, one who steals petty things.

Pillery, rapine; robbery. Obsolete.

Pillory, a frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

The punishment of the pillory, abolished by 56 Geo. III. c. 138, except for perjury, a person convicted for which was directed, by the still unrepealed 5 Eliz. c. 9, to have his ears nailed thereto, was altogether abolished by 7 Wm. IV. and 1 Vict. c. 23.

Pilot, a particular officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's route; or a person taken on board at any particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port. It is to the latter description of persons that the term pilot is now usually applied, and pilots of this sort are established in various parts of the country, by ancient charters of incorporation or by particular statutes. The most important of these incorporations are those of the Trinity House; Deptford Strond; the fellowship of the Pilots of Dover, Deal, and the Isle of Thanet, commonly called the Cinque Port Pilots; and the Trinity Houses of Hull and Newcastle. The 5 Geo. IV. c. 73, established a corporation for the regulation and licensing of pilots in Liverpool. The statute 6 Geo. IV. c. 125, consolidated the laws with respect to the licensing, employment, etc., of pilots. See 'The Merchant Shipping Act, 1854,' 17 & 18 Vict. c. 104, ss. 330—688, pt. 3, 'Pilotage'; 25 & 26 Vict. c. 63, ss. 39—42; and 35 & 36 Vict. c. 73; and *Maud and Pollock on Shipping*, 3rd ed., 194 *et seq.* By 'The Merchant Shipping Act, 1854,' s. 388, no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship in any district where the employment of the pilot is compulsory by law.

Pilotage, the compensation of a pilot.

Pimp-tenure, a very singular and odious kind of tenure mentioned by our old writers, '*Wilhelmus Hoppeshort tenet dimidiam virgatam terræ per servitium custodiendi sex damisellas, scil. meretrices ad usum domini regis.*'—12 *Edw. I.*

Pin-money, an annual sum settled on a wife, to defray her personal expenses in dress and pocket-money.

Courts of equity refuse to call upon a husband to pay beyond the arrears of a year, although stipulated for by a marriage settlement, for the money is meant to dress the wife during the year, so as to keep up the dignity of the husband, and not for the accumulation of the fund. The personal representatives of the wife are not allowed to make any claim for the arrears of pin-money, not even for arrears of a year. If, however, the wife live separate, and have no allowance, an account of the arrears of pin-money will be decreed.—*Aston* v. *Aston*, 1 *Ves.* 269; *Jodrell* v. *Jodrell*, 9 *Beav.* 45.

There was a very ancient tax in France for providing the queen with pins.

Pinnage [fr. *pin* or *pen*], poundage of cattle.

Pinner, a pounder of cattle, a pound-keeper.

Pint, a measure of half a quart, or the eighth part of a gallon.

Pipe, a roll in the Exchequer; otherwise called the great roll. The Pipe-office was abolished by 3 & 4 Wm. IV. c. 99.

Piracy [fr. *pirata*, Lat.], the commission of those acts of robbery and violence upon the sea, which if committed upon land would amount to felony. Pirates hold no commission or delegated authority from any sovereign or state empowering them to attack others. They can, therefore, be only regarded in the light of robbers. They are, as Cicero has truly stated, the common enemies of all (*communes hostes omnium*); and the law of nations gives to every one the right to pursue and exterminate them without any previous declaration of war; but it is not allowed to kill them without trial, except in battle. Those who surrender or are taken prisoners must be brought before the proper magistrates, and dealt with according to law. By the ancient Common Law of England, piracy, if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance; if by an alien, to be felony only; but since the statute of treason, 25 Edw. III. c. 2, it is held to be only felony in a subject. Formerly this offence was only cognizable by the Admiralty Courts, which

proceed by the rules of the civil law, but it being inconsistent with the liberties of the nation that any man's life should be taken away, unless by the judgment of his peers, the statute 28 Hen. VIII. c. 15, established a new jurisdiction for this purpose, which proceeds according to the course of the Common Law.

By the 7 Wm. IV. & 1 Vict. c. 88 (which repealed various previous enactments) it is provided (s. 1) that whosoever shall be convicted of any offence which, by any of the Acts therein before referred to, amounts to the crime of piracy, and is thereby made punishable with death, shall be liable at the discretion of the Court to be transported for the term of the natural life of such offender or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years. See 9 & 10 Vict. c. 24, s. 1. As to the punishment of principals in the second degree and accessories before or after fact, see s. 4 of the 7 Wm. IV., and 1 Vict. c. 88. As to the jurisdiction of the Admiralty in regard to piracy, see 13 & 14 Vict. cc. 26, 27. As to the Colonies, see 12 & 13 Vict. c. 96; and as to India, see 23 & 24 Vict. c. 88.

Piracy of works, an offence against the law of copyright or an author's right to his works, which consists in an exclusive right to the sequence of the words as they stand; and if any one else reprint these without addition, subtraction, or transposition, it is an inroad on the author's right. But, on the one hand, the sentences and words may be so rearranged, that, although nothing be added to, or taken from them, they give a substantially new idea to the public, and are therefore no infringement of the law. And, on the other hand, although parts may be omitted, and new passages introduced, yet, if these alterations be merely colourable, and it is really an attempt to profit by taking the ideas of another, the publication is a piracy.

The remedies for piracy are, an action at law for damages, and an injunction to restrain its continuance. See INJUNCTION and COPYRIGHT.

Pirata est hostis humani generis. 3 Inst. 113.—(A pirate is an enemy of the human race.)

Piscary, Common of, a right or liberty of fishing in the waters of another person. See FISHERY.

Pit, a hole wherein the Scots used to drown women-thieves.—*Skene.*

Pitching-pence, money; commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market. —*Cowel.*

Pittance, a slight repast or refection of fish or flesh more than the common allowance; and the pittancer was the officer who distributed this at certain appointed festivals.—*Cowel.*

Pitt Press, the University Press at Cambridge.

Pixing the coin, ascertaining whether coin is of the proper standard. The trial of the pix takes place before a jury of members of the Goldsmiths' Company, It is now regulated by 33 & 34 Vict. c. 10, ss. 12, 13, which see.

Pl., abbreviation for Placitum, which see.

Placard, or **Placart** [fr. *placard*, Fr.; fr. *plaque*, a flat piece of metal, stone, or wood], an edict, a declaration, a manifesto; also an advertisement or public notification.

Placeman, one who exercises a public employment, or fills a public station; one who lays himself out for the obtaining of public appointments.

Placit, or **Placitum,** decree, determination.

Placita, the public assemblies of all degrees of men where the sovereign presided, who usually consulted upon the great affairs of the kingdom. Also, pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations; also, the style of the court at the beginning of the record at *nisi prius;* but this is now omitted —*Cowel.*

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta, secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent. 2 Inst. 311.—(Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.)

Placitare, to plead

Placitator, a pleader.—*Cowel.*

Placitory, relating to pleas or pleading.

Placitum, any of the points decided in a judgment put concisely by the reporter, abbreviated *pl.* See PLACITA.

Placitum nominatum, the day appointed for a criminal to appear and plead and make his defence.—*Leg. H. I.* c. 29; *Cowel.* *Placitum fractum,* when the day is past.

Placitum aliud personale, aliud reale, aliud mixtum. Co. Litt. 284.—(Pleas are personal, real, and mixed.)

Plagiarist, or **Plagiary,** one who publishes the thoughts and writings of another as his own.

Plagiarius, one who knowingly kept in irons, or confined, sold, gave, or bought a citizen (whether freeborn or a freedman), or the slave of another; the offence being called *plagium.*—*Civ. Law.*

Plagiary [fr. *plagiarius*, Lat.], a man-stealer.

Plagii crimen, or **Plagium**, the stealing and retaining the children of freemen and slaves.—*Civ. Law.*

Plague [fr. πληγή, Gk., a wound], pestilence; a contagious and malignant fever.

By 1 Jac. I. c. 31, it was a capital offence for any infected with the plague, after having been commanded by the mayor or constable, etc., to keep house, to go abroad and in company. This Act was repealed by 7 Wm. IV. and 1 Vict. c. 91, s. 4. See now 38 & 39 Vict. c. 55, ss. 134—140; and tits. PUBLIC HEALTH; QUARANTINE, *post.*

Plaideur, an attorney who pleaded the cause of his client; an advocate. Obsolete.

Plainant, a plaintiff.

Plaint [fr. *plainte*, Fr.; *querela*, Lat.], the statement in writing of a cause of action. It is the first process in an inferior court,—see the term expressly used in County Court Act, 1888, 51 and 52 Vict. c. 43, s. 73,—in the nature of an original writ, because therein is briefly set forth the plaintiff's cause of action; and the judge is bound, of common right, to administer justice therein without a special mandate from the Crown.

Plaintiff [abbrev. *plt.*, or *plff.*, fr. *plaintif*, Fr.], he who commences an action against another, who is called defendant.

Plant, the fixtures, tools, machinery, and apparatus which are necessary to carry on a trade or business.—*Ogil. Imp. Tech. Dict.*

Plants, as to malicious injuries to, see 24 & 25 Vict. c. 97, s. 20 *et seq.*; and as to the larceny of, see 24 & 25 Vict. c. 96, ss. 32—37.

Plantation, a colony.

With respect to their internal policy our colonies are of three sorts: (1) provincial establishments; (2) proprietary governments; (3) charter governments.—1 *Steph. Com.* See COLONY.

Plate, of gold and silver. The duties were repealed by the Customs and Inland Revenue Act, 1890, 53 Vict. c. 8, s. 10.

Play-debt, debt contracted by gaming. See GAMING.

Play-grounds, to facilitate grants of lands for, see 22 Vict. c. 27; and 23 & 24 Vict. c. 30. See OPEN SPACE, RECREATION GROUNDS.

Plea [fr. *plée*, Fr.], this was the name of a defendant's answer of fact to a plaintiff's declaration; anciently a suit or action.

Pleas were divided into *common pleas*, relating to civil causes, and *pleas of the Crown*, relating to criminal prosecutions.

At *Common Law* pleas were divided into—

(1) Dilatory; which were subdivided into—

(*a*) To the jurisdiction of the court.

(*b*) In suspension of the action.

(*c*) In abatement of the writ or declaration, and—

(2) Peremptory, i.e., in bar of the action.

The distinction between these two classes of pleas was, that the dilatory showed some ground for quashing the declaration, the peremptory, for defeating the action. Consult *Bullen and Leake*, or *Blake Odgers, on Pleading*, and *Ch. Arch. Practice.*

In *equity*, a plea was resorted to by a defendant when an objection was not apparent on the bill itself, or, as the technical phrase was, where it arose from matter *dehors* the bill. If the defendant meant to take advantage of it, he ought to have shown the matter which created the objection to the Court, either by plea or by answer. A plea was a special answer, showing or relying upon one or more things, as a cause why the suit should either be dismissed, delayed, or debarred. Pleas were divided into two sorts:—(1) pure pleas, which relied wholly on matter *dehors* the bill, such as a release or a settled account; and (2) anomalous or negative pleas, which consisted mainly of denials of the substantial matters set forth in the bill. As to the former practice in equity see *Story's Equit. Pl.* 492; *Smith's Ch. Pr.* 300; and 1 *Dan. Ch. Pr.*, 5th ed., 520—611.

A defendant now raises his defence in all actions in the High Court of justice by a statement of defence; see that title and PLEADING.

The order of a prisoner's pleas in *criminal* law is as follows;—

(1) To the jurisdiction.

(2) In abatement.

(3) Special pleas in bar, as

(*a*) *Autrefois acquit.*

(*b*) *Autrefois convict.*

(*c*) *Pardon.*

(4) General issue of not guilty.

Plead, to make an allegation in a cause; also to argue a cause in court.

Pleader [fr. *narrator*, Lat.], one who draws pleadings. See SPECIAL PLEADER.

Pleading, in its general sense, the proceedings from the statement of claim to issue joined, i.e., the opposing statements of the parties. 2. Any part of these proceedings.

The science of pleading was no doubt derived from Normandy. The use of stated forms of pleading is not to be traced among the Anglo-Saxons. Pleading was cultivated as a science in the reign of Edward I. The object of pleading is to ascertain, by the production of an issue, the subject for decision. Before the Judicature Acts, pleading in equity consisted of long statements of fact in

'bill' and 'answer;' while pleading at Common Law mainly consisted of short technical statements in 'declaration,' 'plea,' 'replication,' 'rejoinder,' 'surrejoinder,' 'rebutter,' 'surrebutter,' the four last being rarely used. The system of pleading under the Judicature Act is intended to combine the advantages of the two systems; it being provided by R. S. C. 1883, Ord. XIX., r. 4, that 'every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies; but not the evidence by which they are to be proved,' and 'shall, when necessary, be divided into paragraphs numbered consecutively.'

Plead over, to follow up an opponent's pleading by replying, etc., so overlooking some defect to which exception might have been taken.

Pleas of the Crown, the criminal law department of our jurisprudence; so called, because the Sovereign, in whom centres the majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases, the proper prosecutor for every such offence. See the works on this subject of *Coke* (3rd Institute), *Hale*, or *Hawkins*.

Pleasure grounds may be provided by local boards, 38 & 39 Vict. c. 55. s. 164; this section coming in place of 11 & 12 Vict. c. 63, s. 74. See RECREATION GROUNDS, and 23 & 24 Vict. c. 30, and 24 & 25 Vict. c. 96, s. 31; and as to those on Kennington Common, see 15 & 16 Vict. c. 29.

Plebanus, a rural dean.—*Cowel.*

Plebeity, or **Plebity**, the common or meaner sort of people; the plebeians.

Plebiana, a mother church.—*Old Record.*

Plebiscite, or **Plebiscitum**, among the Romans a law enacted by the common people at the request of the tribune or some other plebeian magistrate, without the intervention of the senate; more particularly applied to the law which the people made, when upon some misunderstanding with the senate they retired to the Aventine mount.

Pledge, anything put to pawn or given by way of warrant or security; also a surety, bail, or hostage. See PAWN; PIGNUS.

Pledgee, one who receives pledges; a pawnee.

Pledgery, suretyship, or an undertaking or answering for another.

Pledgor, one who offers a pledge, a pawner.

Plegii de prosequendo, pledges to prosecute with effect an action of replevin.

Plegii de retorno habendo, pledges to return the subject of distress, should the right be determined against the party bringing the act of replevin.—3 *Steph. Com.*

Plegiis acquietandis, a writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day.—*F. N. B.* 137.

Plena et celeris justitia fiat partibus. 4 Inst. 67.—(Let full and speedy justice be done to the parties.)

Plena forisfactura, a forfeiture of all that one possesses.

Plena probatio, testimony by two witnesses. —*Civ. Law.*

Plenarty, said of a benefice when full, or possessed by an incumbent; opposed to *vacancy*.—3 *Steph. Com.*

Plenary, full, complete; an ordinary proceeding through all its gradations and formal steps, opposed to *summary*.

Plenary causes in the ecclesiastical courts are reduced to the following:—

(1) Suits for ecclesiastical dilapidations.

(2) Suits relating to seats or sitting-places in churches.

(3) Suits for tithes.

Plene administravit (*he has fully administered*). A defence by an executor or administrator that he has fully administered all the assets that have come to his hands. The plaintiff, if he cannot dispute the defence, and there are other assets to be received, should enter judgment of assets *quando acciderint*, and, when assets afterwards come to the executor's hands, the plaintiff should sue out a *scire facias*, or writ of revivor against the executor, and proceed to realise the judgment. —*C. L. P. Act*, 1854, s. 91. Consult *Williams on Executors;* and 2 *Steph. Com.*

Plene administravit præter (*he has fully administered, except*). A defence by an executor or administrator that he has fully administered the assets that have come to his hands, except, etc. The plaintiff, if he cannot dispute the defence, should enter judgment presently of the assets acknowledged to be in the defendant's hands, and of assets *in futuro* for the residue.

Plenipotentiary, a person who has full power and commission to do anything.

Pleno lumine. See IN PLENO LUMINE.

Plenum dominium, a title combining the right and the corporal possession of property, which possession could not be acquired without both an actual intention to possess, and an actual seisin or entry into the premises, or part of them, in the name of the whole.—*Civ. Law.*

Plevin [fr. *plevina*, low Lat.], a warrant or assurance.

Plight, signifieth an estate, with the habit and quality of the land; it extends to a rent-charge and to a possibility of dower.—*Co. Litt.* 221 *b.*

Plok-pennin, a kind of earnest used in public sales at Amsterdam.

Plough-alms [*eleemosynæ aratrales*, Lat.], the ancient payment of a penny to the church from every plough land.—*Mon. Angl.* 1, 256.

Plough-bote, a tenant's right to take wood for the repairs of ploughs, carts, and harrows, and for making rakes, forks, etc.

Plough-land, a hide of land, a carucate, which see.—*Co. Litt.* 69 *a*, 86 *b*.

Plough-Monday, the Monday after Twelfth-Day.

Plough-silver, money formerly paid by some tenants, in lieu of service to plough the lord's lands.

Plowden's (Edm.) Commentaries or **Reports,** first published in 1571. They contain cases from 4 Edw. VI. to 20 Eliz., and from the close style of the reporter, have been said to form some of the most instructive and most entertaining books in the law.—5 *Reeves*, c. 35, 241.

Plunderage, embezzling goods on shipboard.—*Mar. Law.*

Plurales numerus est duobus contentus. 1 Rol. Rep. 476—(The plural number is satisfied by two.)

Pluralist, one that holds more than one ecclesiastical benefice with cure of souls. See next title.

Plurality, majority; in greater number than one. The holding of more than one ecclesiastical benefice is very much restricted.

The Pluralities Act, 1838, 1 & 2 Vict. c. 106 (repealing the former statute against pluralities, 21 Hen. VIII. c. 13), as amended by s. 14 of the Pluralties Act, 1885, provides that two benefices may be held together, by dispensation of the archbishop on the recommendation of the bishop, if the churches be within four miles of each other, and if the annual value of one does not exceed 200*l.*

Plures cohæredes sunt quasi unum corpus propter unitatem juris quod habent. Co. Litt. 163.—(Several co-heirs are, as it were, one body, by reason of the unity of right which they possess.)

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Co. Litt. 164. —(Several parceners are as one body, in that they have one right.)

Pluries (*as often*), a writ that issues in the third instance, after the first and the *alias* have been ineffectual. See EXECUTION.

Plus exempla quam peccata nocent. (Examples hurt more than crimes.)

Plus peccat auctor quam actor. 5 Co. 99.—(The causer offends more than the performer.)

Plus petitio, or **Pluris petitio,** when a demandant includes in his demand (in the *intentio* of the formula) more than his due. It happens in four ways. See *Com. C. L.* 347; *Sand. Just.*, 7th ed., 452.

Plus valet quod agitur quam quod simulatè concipitur.—(What is done more avails than what is pretended to be done.)

P. O., abbreviation of public officer. See PUBLIC OFFICER.

Poach [fr. *pocher*, Fr., to thrust or dig], to *poch* into or encroach upon another man's employment, practice, or trade.—*Cot.*

Poaching, taking game by trespass.

By 9 Geo. IV. c. 69, s. 1, extended by 7 & 8 Vict. c. 29, it is provided, that if any person shall by *night* unlawfully take or destroy any game or rabbits in any land or on any public road, etc., or shall, by night, be in such places with any gun, net, engine, etc., for the purpose of taking game, he shall be liable to imprisonment, for the first offence, for any period not exceeding three months, with hard labour, and at the expiration of such period to be bound over to his good behaviour by sureties for a year, or in default thereof, to be further imprisoned for six months, or until such sureties are found. For a second offence he is liable to imprisonment for six months, and then to be bound in sureties for two years, and in default thereof, to be further imprisoned for one year, or until such sureties are found. And if he offend a third time, he is guilty of a misdemeanour, and liable to penal servitude, or imprisonment with hard labour for not more than two years. When any person is found committing such offence, the owner or occupier of the land or any person having a right of sporting therein, or the lord of the manor, or the gamekeeper may apprehend him: and if he assault the person apprehending him, he is guilty of a misdemeanour, and liable to penal servitude or imprisonment with hard labour for not more than two years.

By s. 9, any persons, *to the number of three or more, by night* unlawfully entering lands, for the purpose of taking or destroying any game or rabbits (any of them being armed with any gun or other offensive weapon), are each guilty of a misdemeanour, and liable to penal servitude for any term between seven and three (now five) years, or imprisonment with hard labour for not more than three years.

By 25 & 26 Vict. c. 114, 'An Act for the Prevention of Poaching,' power is given to any constable, in any highway, etc., to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search of game, and having in his possession any game unlawfully obtained, or any gun, or net for

taking game, and also to stop and search any cart, etc., in which such constable, etc., shall have good cause to suspect that any such game, etc., is being carried by any such person, and should there be found any game, etc., upon such person, cart, etc., to seize such game, etc.; and such constable, etc., shall in such case apply to some justice for a summons, citing such person to appear before two justices, by whom the party may on conviction be fined any sum not exceeding 5*l.*, etc. (s. 2). An appeal against a summary conviction is given to the quarter sessions (s. 6). The word 'game' in this act includes hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game (s. 1). See also title GAME.

Pocket-judgment, a statute-merchant which was enforceable at any time after non-payment on the day assigned, without further proceedings. See STATUTE-MERCHANT.

Pocket-sheriff. When the sovereign appoints a person sheriff who is not one of the three nominated in the Queen's Bench Division of the High Court, he is called a pocket-sheriff—1 *Bl. Com.* 342..

Pœnâ, ex delicto defuncti, hæres teneri non debet. 2 Inst. 198.—(The heir ought not to be bound in a penalty for the crime of the defunct.)

Pœna non potest, culpa perennis erit.—(Punishment cannot be, crime will be lasting.)

Pœnæ potius molliendæ quam exasperandæ sunt. 3 Inst. 220.—(Punishments should rather be softened than aggravated.)

Poet-laureate. See LAUREATE.

Poinding, the Scotch term for taking goods, etc., in execution, or by way of distress. It is defined to be 'the diligence (process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt.' It is either real or personal; not that any inheritance is conveyed by a poinding, but real poinding is a power of carrying off the effects on the land in payment of such debts as are *debita fundi*, or heritable; personal poinding is the poinding of movables for debt or for rent, etc. There is also a species of poinding by attaching cattle trespassing.—See *Bell's Scotch Law Dict.*

Poinding of the ground, a poinding in Scotland, founded on a heritable security or other *debitum fundi*, for poinding or taking in execution all the goods on the lands over which the security extends. See ACTION FOR POINDING OF THE GROUND.

Points: in the paper books were the chief grounds or heads of argument on which each party relied, on an argument in the special paper. See PAPER BOOKS.

Poison [*poison*, Fr.; fr. *potio*, Lat., a drink,—applied originally to a medicated drink or draught; a drink in which some venomous morsel or deadly ingredient is mixed; and now to any venomous morsel or deadly ingredient. See *Rich. Dict.*], a substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life.

The means of ascertaining the traces of poison, either on the living or dead body, is one of the most important subjects in legal medicine, and its importance is only equalled by its difficulty.—*Beck's Med. Jurisp.*; *Taylor's Med. Jur.*; *Christison on Poisons*, and *Taylor on Poisons.*

As to the administering, or causing to be administered, poison or other destructive thing, if the offence is committed with intent to commit murder it is a felony, punishable with penal servitude for life, or any term not exceeding three (now five) years, or with imprisonment for any term not exceeding two years (24 & 25 Vict. c. 100, s. 11), and so is the attempt to administer with like intent, whether bodily injury be effected or not (s. 14).

As to the unlawful and malicious administering poison so as to endanger life or to inflict grievous bodily harm (which is a felony), or with intent to injure, aggrieve, or annoy (which is a misdemeanour), see ss. 23, 24 of the same Act.

By 14 & 15 Vict. c. 13, certain restrictions —as that name and address, etc., of the purchaser is to be registered by the seller—are placed upon the sale of arsenic, and by the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), persons selling or compounding poisons, or assuming the title of chemist or druggist, must be qualified as by that Act is required. For the purposes of that Act the following are to be deemed poisons:—Arsenic and its preparations, prussic acid, cyanides of potassium and all metallic cyanides, strychnine, and all poisonous vegetable alkaloids and their salts, aconite and its preparations, emetic tartar, corrosive sublimate, cantharides, savin and its oil, ergot of rye and its preparations, oxalic acid, chloroform, belladonna and its preparations, essential oil of almonds, unless deprived of its prussic acid, opium and all preparations of opium, or of poppies. The Act makes it unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be

distinctly labelled with the name of the article and the word 'poison,' and with the name and address of the seller of the poison; and various other restrictions are placed on the sale of poisons, as to which see s. 17. See also ADULTERATION.

Poisoned flesh. Penalties are imposed on placing poisoned flesh upon land, unless properly protected, by 27 & 28 Vict. c. 115.

Poisoned grain or seed. The Poisoned Grain Prohibition Act (26 & 27 Vict. s. 113) imposes penalties upon persons selling or exposing for sale, and upon persons sowing or causing to be sown, poisoned grain, seed, or meal (ss. 2, 3), but solutions or infusions, or materials for preparing any grain or seed for *bonâ fide* use in agriculture, are not within the Act (s. 4).

Poisonous Drugs. The Drugging of Animals Act, 1875, 39 Vict. c. 13, imposes a penalty on any person (without the authority of the owner) administering poisonous drugs to horses or other animals.

Pole, a measure of five and a half yards.

Police [fr. πόλις, Gk., a city], the regulation and government of a country or city; the constabulary of a locality. See CONSTABLE; METROPOLITAN POLICE ACTS; and *Chitty's Statutes*, vol. iv., tits. '*Police*' and '*Police (Metropolis)*.'

Police Courts (Metropolis), courts in which stipendiary magistrates, chosen from barristers of a certain standing, despatch business. Their general duties and powers are the same as those of the unpaid magistracy, except that one of them may usually act in cases which would require to be heard before two other justices.

There are several police courts in and about the metropolis, severally situated in Bow Street, Covent Garden; Vincent Square, Westminster; Great Marlborough Street; Clerkenwell; Dalston; Worship Street, Shoreditch; Kennington Lane, Lambeth; High Street, Marylebone; Blackman Street, Southwark; Thames Police Court at Stepney; Greenwich and Woolwich; Hammersmith and Wandsworth; besides the Mansion House and Guildhall in the City. See 34 & 35 Vict. c. 35; 38 & 39 Vict. c. 3; and METROPOLITAN POLICE ACTS.

Policies of Insurance, Court of. It was erected in pursuance of 43 Eliz. c. 12 (repealed by Stat. Law Rev. Act, 1863), which enabled the Lord Chancellor yearly to grant a standing commission to the Judge of the Admiralty, the Recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a civilian or a barrister, were thereby, and by 13 & 14 Car. II. c. 23 (also repealed by Stat. Law Rev. Act, 1863) empowered to determine in a summary way all causes concerning policies of insurance in London, with an appeal by way of bill to the Court of Chancery. It had been long wholly disused in Blackstone's time.—3 *Bl. Com.* 74.

Policy, the general principles by which a government is guided in its management of public affairs; or the legislature in its measures. See PUBLIC POLICY.

Policy of Insurance, a contract between A. and B., that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event.

Upon a policy of marine or fire insurance, the remedy of the assured, in case of breach of contract by the insurer, is by covenant, where the policy is under seal; by assumpsit where it is not. On a policy of life insurance under seal, the remedy is by debt or covenant; on one not under seal, *indebitatus assumpsit*. See INSURANCE.

The 'Policies of Insurance Act, 1867' (30 & 31 Vict. c. 144), enabled assignees of life policies to sue thereon in their own names. The 'Policies of Marine Assurance Act, 1868' (31 & 32 Vict. c. 86), made a like provision in regard to marine policies. See also CHOSE.

Politiæ legibus non leges politiis adaptandæ. Hob. 154.—(States are to be adapted to the laws, and not the laws to States.)

Political Offices Pension Act, 1869. 32 & 33 Vict. c. 60.

Politics [fr. πολιτική, Gk.], the science of government; the art or practice of administering public affairs.

Polity [fr. πολιτεία, Gk., the government of a city], the form of government; civil constitution.

Poll [fr. *polle*, *pol.*, Dut., the top; fr. the Su. Goth. *bollur*, a globe], the head; a catalogue or list of persons; a register of heads. Also the act of registering votes at an election. See also DEED POLL.

Poll, to give a vote at an election; also to receive a vote. As to taking a poll at Parliamentary and Municipal Elections by secret voting, see the Ballot Act, 1872; under the Public Health Act, 1875, see sched. 3 to that Act.

Pollah, a government lease granted to a cultivator, either written on paper or engraved with a style on a leaf of the Fan-palmyra tree.—*Indian.*

Pollards, or **Pollengers,** trees which have been lopped, distinguished from timber-trees. —*Plowd.* 649.

Pollicitation, a promise before it is accepted.—*Civ. Law.*

Polligar, Polygar, the head of a village or district; also a military chieftain in the

peninsula, answering to a hill *zemindar* in the northern circars.—*Indian.*

Polling places. As to these for the election of Members of Parliament, see 2 Wm. IV. c. 45; 6 & 7 Wm. IV. c. 102; 16 & 17 Vict. c. 168; and 25 & 26 Vict. c. 95; 30 & 31 Vict. c. 102, ss. 34, 35; 35 & 36 Vict. c. 33.

Poll-money, Poll-silver, Poll-tax, a capitation-tax. It was formerly assessed by the head on every subject according to rank.

Polls, Challenge to the. See CHALLENGE.

Polyandry, the state of a woman who has several husbands. See BIGAMY.

Polygamy [fr. πολύς, Gk., many; and γάμος, marriage], plurality of wives or husbands. See BIGAMY.

It is prohibited by the Christian religion, but permitted by some others.

Polygarchy [fr. πολύς, Gk., many; and ἀρχή, government], that kind of government which is in the hands of many.

Pondus, poundage, i.e., a duty paid to the Crown according to the weight of merchandise.

Pondus regis, the standard weight appointed by our ancient kings.—*Cowel.*

Pone. If goods had been replevied by virtue of a *replegiari facias* (which was rarely if ever the case), the plaint in a County Court was removed into the King's Bench or Common Pleas by writ of *pone.* It was an original writ obtained from the cursitor, bearing *teste* after the entry of the plaint in the County Court, and returnable on a general day in term, wheresoever, etc. It was also the proper writ to remove all suits which were before the sheriff by writ of justices. Obsolete. —3 *Steph. Com.*

Pone per vadium, an obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute: it was so called from the words of the writ, *pone per vadium et salvos plegios*—'put by gage and safe pledges, A. B., the defendant.' It is issued out of the Common Pleas, being grounded on the non-appearance of the defendant, at the return of the original writ; and thereby the sheriff was commanded to attach him by taking gage, i.e., certain of his goods which he should forfeit if he did not appear; or by making him find safe pledges or sureties, who should be amerced in case of his non-appearance.—3 *Bl. Com.* 210. Previous to the Uniformity of Process Act (2 Wm. IV. c. 39), it was also the first and immediate process, without any previous summons upon actions of trespass *vi et armis,* or for other injuries which, though not forcible, were trespasses against the peace, as deceit and conspiracy, where the violence of the wrong required a speedy remedy; and therefore the original writ commanded the defendant to be at once attached without any warning. These actions are now commenced by a writ of summons.—1 & 2 *Vict.* c. 110.

Ponendis in assisis, an abolished writ to empannel juries.—*F. N. B.* 165.

Ponendum in ballium, a writ commanding that a prisoner be bailed in cases bailable.—*Reg. Orig.* 133.

Ponendum sigillum ad exceptionem, a writ by which justices were required to put their seals to exceptions exhibited by a defendant against a plaintiff's evidence, verdict, or other proceedings before them, according to the stat. *West.* 2, 13 *Edw. I.* st. 1, c. 31. See BILL OF EXCEPTIONS.

Pontage [fr. *pons,* Lat., a bridge], duty paid for the reparation of bridges; also, a due to the lord of the fee for persons or merchandises that pass over rivers, bridges, etc.—*Cowel.*

Pontibus reparandis, a writ directed to the sheriff, etc., requiring him to charge one or more to repair a bridge.—*Reg. Orig.* 153.

Pool, a small lake of standing water. By the grant of a pool, both the land and water will pass.—*Co. Litt.* 5.

Poor Laws. The poor of England, till the time of Henry VIII., subsisted entirely upon private benevolence, and the charity of well-disposed Christians. See 5 *Reeves,* 18.

By 43 Eliz. c. 2 (generally considered the foundation of the modern poor law) overseers of the poor are appointed in every parish; the churchwardens of every parish are to be overseers of the poor; and besides these, there are appointed, as overseers in each parish, two, three, or four, but not more, of the inhabitants, such last-mentioned overseers to be substantial householders, and to be nominated yearly on the 25th March, or within 14 days after, by two justices dwelling near the parish.—54 *Geo. III.* c. 91.

Their duty, according to this statute, was: 1st, to provide work for all who had no means to maintain themselves, and used no trade; and 2ndly, to raise sums for the relief of the lame, impotent, old, blind, and other poor not able to work. For these purposes they had power to levy rates upon the inhabitants of the parish.

By 4 & 5 Wm. IV. c. 76 (the Poor Law Amendment Act), the administration of the parochial funds and the management of the poor throughout the country were placed for five years under the control of a central board called 'The Poor Law Commissioners'; who were succeeded in 1847 by a temporary 'Poor Law Board' which was made perpetual, after many continuances, in 1867, but whose

powers and duties became in 1871, by 'The Local Government Board Act, 1871' (34 & 35 Vict. c. 70), vested in the 'Local Government Board.'

General or special orders of a voluminous and detailed character (see Glen's Poor Law Orders), made by one or other of the above named authorities under the powers of the Act of 1834, have been since that Act the main sources of the Poor Law; but the statutes upon the subject have also been very numerous. The more important of them are the Act of 1844 (7 & 8 Vict. c. 101); the Act of 1849 (12 & 13 Vict. c. 103); the Act of 1867 (30 & 31 Vict. c. 106); the Act of 1868 (31 & 32 Vict. c. 122); and the Act of 1876 (39 & 40 Vict. c. 61). Consult *Chitty's Statutes*, vol. v., tits. '*Poor*'; *Poor* (*Apprentices*), *Poor* (*Bastards*), *Poor* (*Rating*), *Poor* (*Settlement and Removal*), *and Poor* (*Metropolis*).

The duty of making and levying the poor-rate or parochial fund, out of which the relief is to be afforded, still belongs, as before the changes in the law of relief, to the churchwardens and overseers; and the concurrence of the inhabitants is not necessary. But for the better execution of these duties, the recent Acts relating to the amendment of the Poor Law authorise the appointment of collectors and assistant overseers. The rate is raised prospectively for some given portion of the year, and upon a scale adapted to the probable exigencies of the parish; and the Act of Elizabeth directs that it should be raised by 'taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the parish.' Now by the 'Rating Act, 1874' (37 & 38 Vict. c. 54), the liability to rates is extended to (1) land used for a plantation or wood, or for the growth of saleable underwood, and not subject to any right of common; (2) rights of fowling, shooting, taking, or killing game or rabbits, and fishing, when severed from the occupation of the land; and (3) mines of every kind not mentioned in the Act of Elizabeth. As an occupier, a man is ratable for all lands which he occupies in the parish, whether he is resident or not; but the tenant and not the landlord is considered as the occupier within this statute.

By 43 Eliz. c. 2, s. 1, no rate can be deemed valid unless it be allowed by two justices. The allowance by the justices is a mere matter of form; but after allowance and publication, any person aggrieved by the rate, and having reasonable objection to it, as irregular or unequal, may appeal against it (after notice of objection to, and failure to obtain relief from the 'Union Assessment Committee') to the next practicable quarter sessions of the county, riding, or division, or, in some cases, of the corporation or franchise in which the parish is situate. As to the recovery of poor rates, see 25 & 26 Vict. c. 82.

The poor in Ireland had, till of late years, no relief but from private charity. But by 1 & 2 Vict. c. 56, intituled 'An Act for the more effectual Relief of the destitute Poor in Ireland,' the authority of the Poor Law Commissioners was extended to that part of the realm. There is now an Irish Board of Commissioners. This Act has been amended by 2 & 3 Vict. c. 1; 4 & 5 Vict. c. 41; 6 & 7 Vict. c. 92; 10 & 11 Vict. cc. 31, 90; 11 & 12 Vict. c. 25; 14 & 15 Vict. c. 68; 15 & 16 Vict. c. 37. As to the relief of the poor in Scotland, see 8 & 9 Vict. c. 83; 17 & 18 Vict. c. 86, s. 6; 19 & 20 Vict. c. 117.

Popery. See PAPISTS.

Populace, or **Populacy** [fr. *populus*, Lat.], the vulgar; the multitude.

Popular action, brought by one of the public to recover some penalty given by statute to any who chooses to sue for it. See also QUI TAM ACTION.

Populous parishes. For their spiritual improvement, see 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; and 19 & 20 Vict. c. 104.

Porrecting, producing for examination or taxation, as porrecting a bill of costs, by a proctor.

Portatica, port-duties charged on ships.

Porter, an officer who carries a white or silver rod before the justices in *eyre*, so called *à portando virgam*; also, a person employed to carry messages, parcels, etc. Porters in the City of London are regulated by the corporation.

Porterage, a kind of duty formerly paid at the custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished; also, the charge made for sending parcels.

Portgreve, or **Portreeve**, a magistrate in certain sea-coast towns.—*Cowel.*

Portion, that part of a person's estate which is given or left to a child.

There are two ways of raising portions, one by sale or mortgage, the other by perception of profits. Interest is payable on portions from the time they become due. All causes and matters connected with the raising of portions or other charges on lands, are assigned to the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 34).

Portioner, a minister who serves a benefice, together with others, so called because

he has only a portion of the tithes or profits of the living; also an allowance which a vicar commonly has out of a rectory or impropriation.—*Cowel.*

Portmen, the burgesses of Ipswich and of the Cinque Ports.—*Camden.*

Portmote, a court held in haven towns or ports, and sometimes in inland counties.

Portoria, duties paid in ports on merchandise.—*Civil Law.*

Ports, harbours; safe stations for ships.—16 & 17 *Vict.* c. 107. See HAVENS; and I *Br. & Had. Com.* 314, and 2 *Steph. Com.*

Portsale, a public sale of goods to the highest bidder; also a sale of fish as soon as it is brought into the haven.—*Cowel.*

Portsoka, or **Portsoken,** the suburbs of a city, or any place within its jurisdiction.—*Somner*; *Cowel.*

Portuas, a breviary.—*Cowel.*

Portus est locus in quo exportantur et importantur merces. 2 Inst. 148.—(A port is a place where goods are exported or imported.)

Positio, a claim.

Positive evidence, proof of the very fact, opposed to negative evidence.

Positive law. Law which is not an enforcement of the moral law, and to which disobedience is *malum prohibitum*, not *malum in se.* See MALA PROHIBITA; MALA IN SE.

Posito uno oppositorum negatur alterum. 3 Rol. Rep. 422.—(One of two opposite positions being affirmed, the other is denied.)

Posse, a possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

Posse comitatus, the 'power of a county,' including the aid and attendance of all knights and other men above the age of fifteen within the county; but ecclesiastical persons, peers, and such as labour under any infirmity are not compellable to attend. It is called out when a riot is committed, a possession is kept on a forcible entry, or any force is used or rescue made contrary to the commandment of the Queen's writ, or in opposition to the execution of justice; and it is expressly authorised to be called out by the Sheriffs Act, 1887, s. 8. subs. 2, for the purpose of resisting the execution of a writ.

Possessio. Paulus (*Dig.* 41, tit. 2, s. 1) observes, '*Possessio appellata est, ut et Labeo ait, à pedibus, quasi positio; quia naturaliter tenetur ab eo qui insistit.*' The absurdity of the etymology and of the reason are equal. The elements of *possidere* are either *pot* (*potis*) and *sedere*; or the first part of the word is related to *apud*, and the cognate Greek form of ποτί (πρός).

Possessio, in its primary sense, is the condition or power by virtue of which a man has such a mastery over a corporeal thing as to deal with it at his pleasure, and to exclude other persons from meddling with it. This condition or power is detention; and it lies at the bottom of all legal senses of the word possession. This possession is no legal state or condition, but it may be the source of rights, and it then becomes *possessio* in a juristical or legal sense. Still, even in this sense, it is not in any way to be confounded with property (*proprietas*). A man may have the juristical possession of a thing without being the proprietor, and a man may be the proprietor of a thing without having the juristical possession of it, and consequently without having the detention of it (*Dig.* 41, tit. 2, s. 12). Ownership is the legal capacity to operate on a thing according to a man's pleasure, and to exclude everybody else from doing so. Possession, in the sense of detention, is the actual exercise of such a power as the owner has a right to exercise. The term *possessio* occurs in the Roman jurists in various senses. There is *possessio* generally, and *possessio civilis*, and *possessio naturalis.*

Possessio denoted, originally, bare detention; but this detention, under certain conditions, becomes a legal estate, inasmuch as it leads to ownership through *usucapio.* Accordingly the word *possessio*, which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapio*, is called *possessio civilis*, and all other *possessio* as opposed to *civilis* is *naturalis.*—*Smith's Dict. of Antiq.*; *Sand. Just.*, 7th ed., 136 *et seq.*

Possessio fratris, a seisin to turn the descent away from the brother of the half-blood to the sister of the whole-blood; thus, if a father had two sons, A. and B., by different wives, these two brethren were not brethren of the whole blood, and therefore could never inherit to each other, but the estate rather escheated to the lord. Nay, even if the father died, and his lands descended to his eldest son, A., who entered thereon, and died seised without issue, still B. could not be heir to this estate, because he was only of the half-blood to A., the person last seised; but it descended to a sister (if any) of the whole-blood to A.; for in such cases the maxim was, that the seisin, or *possessio fratris*, made the sister the heiress. Yet, had A. died without entry, then B. might have inherited, not as heir to A., his half-brother, but as heir to their common father, who was the person last actually seised. Abolished by 3 & 4 Wm. IV. c. 106.

Possessio fratris de feodo simplici facit sororem esse hæredem. 3 Rep. 41.—(The brother's possession of an estate in fee simple makes the sister to be heir.)

Possession, the state of owing or having a thing in one's own hands or power; the thing possessed.

It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised; *in law*, when lands, etc., have descended to a man, and he has not actually entered into them; or *naked*, that is mere possession, without colour of right.

Possession is nine-tenths of the law. This adage is not to be taken to be true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's. For instance, if the claimant be able to show a descent from the grantor of the estate, perfect except in one link of the chain, and the man in possession be a perfect stranger, the latter shall keep the estate; and so, also, if the claimant be a natural son of the last owner and adopted by him, and declared by him to be designed as his heir, yet if he die without making a will in his favour, a stranger in possession has a better title.

Possession, Writ of, the process of execution in an action of ejectment. A judgment for the recovery, or for the delivery of the possession, of land may be enforced by writ of possession (R.S.C. 1883, Ord. XLVII.). See HABERE FACIAS POSSESSIONEM.

Possessory action, the action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury he was in actual, or constructive, and exclusive possession.—3 *Br. & Had. Com.* 268, 273.

Possibilitas post dissolutionem executionis nunquam reviviscatur. 1 Rol. Rep. 321.—(Possibility is never revived after the dissolution of the execution.)

Possibilitas, an act wilfully done, as *impossibilitas* is a thing done against the will.

Possibility, expectation, an uncertain thing, which may or may not happen.

It is either *near*, or *ordinary*, as where an estate is limited to one after the death of another; or *remote*, or *extraordinary*, as where it is limited to a man, provided he marries a certain woman, and that she shall die and he shall marry another.

Possibility on a possibility. A remote possibility, as if a remainder be limited in particular to A.'s son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name. —*Cholmley's case*, 2 *Rep.* 51.

Post, after: occurring in a report or a text-book, is used to send the reader to a subsequent part of the book.

Post, a conveyance for letters or dispatches. The word is derived from *positi*, the horses carrying the letters or despatches being kept or placed at fixed stations. The word is also applied to the person who conveys the letters to the houses where he takes up and lays down his charge, and to the stages or distances between house and house. Hence the phrases, post-boy, post-horse, post-house, etc.

As to the meaning of 'service by post' in an Act of Parliament, see SERVICE BY POST.

Post, Writs of entry in, an abolished writ given by statute of Marlbridge, 52 Hen. III. c. 30, which provided that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed, without any mention of degrees at all.

Postage, the duty or charge imposed on letters or parcels conveyed by post. See 3 & 4 Vict. c. 96; 10 & 11 Vict. c. 85; and 33 & 34 Vict. c. 79. As to the postage on letters to seamen and soldiers whilst on active service, see 23 & 24 Vict. c. 65. By 34 & 35 Vict. c. 30, reduction of rates of postage between places in the United Kingdom may be effected by warrant of the Treasury. A warrant of the Treasury has since been issued accordingly. See 33 & 34 Vict. c. 79, and title POST-OFFICE. A treaty has now been made, regulating the postage between England and various other countries. See POSTAL CONVENTION.

Postal Convention, a treaty made at Berne in October, 1874, for the regulation of rates of postage and other matters connected with the Post-office, between England and various other countries. See 38 & 39 Vict. c. 22.

Post and Per. See PER AND POST.

Post Conquestum (*after the Conquest*).

Post dating bills or notes. A bill or note or cheque may be post-dated.—*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 13, subs. 2.

Post idem (*after the day*).

Post disseisin, a writ that lay for him who having recovered lands or tenements by force of *novel disseisin*, was again disseised by the former disseisor.

Postea (*afterwards*), the return of the judge before whom a cause was tried, after a verdict of what was done in the cause. It

was indorsed on the *nisi prius* record by the associate.—1 *Chit. Arch. Prac.*

Post entry. When goods are weighed or measured, and the merchant has got an account thereof at the Custom House, and finds his entry already made too small, he must make a post or additional entry for the surplusage in the same manner as the first was done. As a merchant is always in time prior to the clearing of the vessel to make his post, he should take care not to over-enter. However, if this be the case, and an over-entry has been made and more paid or bonded for customs than the goods really landed amount to, the land-waiter and surveyor must signify the same upon oath, and a statement be made and subscribed by the person so over-entered, that neither he, nor any other to his knowledge, had any of the said goods over-entered on board the said ship, or anywhere landed them without payment of custom; which oath must be attested by the collector or comptroller, or their deputies, who then compute the duties and set down on the back of the certificate the several sums to be paid.—*McCull Com. Dict.*

Posteriora derogant prioribus.—(Things subsequent supersede things prior.)

Posteriority, coming after, the correlative of *priority.*

Posterity, succeeding generations, descendants, opposed to *ancestry.*

Post executionem statûs lex non patitur possibilitatem. 3 Buls. 108.—(After the execution of the estate the law suffers not a possibility.)

Post-fine, a duty formerly paid to the king for a fine acknowledged in his court; it was paid by the cognisee after the fine was fully passed. See FINE.

Posthumous child, a child born after its father's death; who by 10 & 11 Wm. III. c. 16, may take an estate as if born in its father's lifetime, although there be no limitation to trustees to preserve the contingent remainder to such child.

Postliminium, the return of a person to his own country, after having sojourned abroad. The right of *Postliminy* is that by virtue of which persons and things taken by an enemy in war are restored to their former state, upon coming again under the power of the nation to which they belonged.—*International Law.* See 2 *Steph. Com.*

Post litem motam (*after the commencement of litigation*), **depositions, etc.** Where they relate to the subject of suit, they are not admissible when made after the litigation has commenced.—*Stark. Evid.*, 4th ed., 421.

Postman, a barrister in the Court of Exchequer and Exchequer Division of the High Court, who had precedence in motions till the Exchequer was merged in the Queen's Bench Division.—3 *Bl. Com.* 28.

Postmaster-General. The head of the Post-office. He is usually one of the Ministry. He may now sit in the House of Commons.—29 & 30 *Vict.* c. 55. There were two before 1822, when one was abolished.

Post-mortem (*after death*), as a *post-mortem* examination of a corpse by a surgeon, in order to discover the cause of death. Such an examination may be ordered by a coroner under the Coroners Act, 1887, s. 21.

Post-natus, the second son; also one born in Scotland after the accession of James I., and therefore not an alien in England. See also Co. Litt. 391.

Post-note, a bank-note, intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank-note, which is payable to the bearer.

Post-nuptial settlement, a settlement made after marriage; it is generally deemed voluntary unless made pursuant to written articles entered into before the marriage. See FRAUDULENT CONVEYANCES.

Post-obit bond. A bond, conditioned to be void on the payment by the obligor of a sum of money upon the death of another person. In most cases the person upon whose death it is so payable is one from whom the obligor expects to derive some property. *Post-obit* bonds, and other securities of a like nature, are set aside, when made by heirs and expectants, as frauds upon the parents and other ancestors, unless the person dealing with such heir can prove satisfactorily that the stipulated payment is not more than a just indemnity for the hazard. Even the sale of a *post-obit* bond at public auction will not necessarily give it validity, or free it from the imputation of being obtained under the pressure of necessity. See BOND; EXPECTANT HEIR.

Post-office, the Government service for the carriage of letters, first established in 1643. Regulated by statutes 7 Wm. IV. and 1 Vict. c. 33; 1 & 2 Vict. cc. 97, 98; 3 & 4 Vict. c. 96 (the Post Office (Duties) Act, 1840, which established penny postage), the Post Office Act, 1870, 33 & 34 Vict. c. 79; the Mail Ships Act, 1891, 54 & 55 Vict. c. 31; the Post Office Act, 1891, 54 & 55 Vict. c. 46, and many other Acts.

Postponement of Trial, may be applied for on sufficient grounds, which must appear by affidavit. Such grounds are the absence of an important witness, who can be expected to be produced in a short time, or a state of

public feeling in the present which will prevent either party having a fair trial. The postponement should be applied for before the other side has time to try, and will be allowed upon such terms as the Court thinks fit. It is a ground for a new trial if a judge improperly refuse to put off a trial.—2 *Chit. Arch. Prac.*, 12th ed., 1521.

Civil trials may be postponed under R.S.C. 1883, Ord. XXXVI., and criminal trials under 14 & 15 Vict. c. 100, s. 27.

Post-terminal Sittings. See SITTINGS AFTER TERM.

Post terminum (*after the term*).

Postremo-geniture, Borough-English, which see.

Postulatio, the first act in a criminal proceeding.—*Civ. Law.*

Postulation, a petition.

Post-vene, to come after.

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum. 11 Co. 51.—(Possibility is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.)

Potentia propinqua (*common possibility*).

Potestas suprema seipsam dissolvere potest, ligare non potest. Bac. Max. Reg. 19.—(The supreme power may loose, but cannot bind, itself.)

Potior est conditio defendentis.—(The condition of a defendant is the better.)

Potior est conditio possidentis.—(The condition of one possessing is the better.)—*Broom's Leg. Max.*, 6th ed., 209, 667. See POSSESSION IS NINE-TENTHS OF THE LAW.

Potwallers, or **Potwallopers,** persons who cooked their own food, and were on that account in some boroughs entitled to vote for Members of Parliament.—See 2 *Steph. Com.*

Pound [fr. *pund*, Sax.; *pondo*, Lat.], a certain weight, consisting in troy weight of 12, in avoirdupois of 16 ounces; the sum of 20*s.*—so called because in Saxon times 240 pence weighed a pound. See *Lambard*, 219, *voce* '*Libra.*'

Pound [fr. *pindan*, Sax.], a penfold, an enclosure, a prison in which beasts seized for rent (see DISTRESS) or caught on the land of another (see DAMAGE FEASANT) may be kept until they are replevied or redeemed. It is either *overt*, i.e., open overhead; or *covert*, i.e., close. A pound-keeper is bound to receive everything offered to his custody, and is not answerable if the thing be illegally impounded.—1 *T. R.* 62. See 1 & 2 P. & M. c. 12; 11 Geo. II. c. 19; and as to feeding cattle impounded, 12 & 13 Vict. c. 92, ss. 5, 6. Pound-breach in the case of distress for rent makes the breaker liable to the party grieved to treble damages and costs, by 2 W. & M. sess. 1, c. 5, s. 4, and in the case of distress on cattle damage feasant to a penalty of not more than 5*l.*, recoverable before justices of the peace, by 6 & 7 Vict. c. 30.

Pound of land, an uncertain quantity of land, said to be about 52 acres.

Poundage, a certain sum deducted from or added to each pound of any sum of money recovered by one person for another, to remunerate the person recovering the sum for his trouble.

The sheriff's poundage by subs. 1 of s. 20 of the Sheriffs Act, 1887, in case of debts due to the Crown, is 1*s.* 6*d.* for the first hundred pounds recovered, and 1*s.* for every pound exceeding the first hundred; while in case of other debts it is as fixed by Rules under subs. 2. It is added to each pound of the debt, and may be levied with other expenses of execution over and above the sum due, by R.S.C., Ord. XLII., r. 14.

Pour faire proclaimer, an ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, etc.—*Fitzherbert's Nat. Brev.* 176.

Pourparty, to divide the lands which fall to parceners.—*O. N. B.* 11.

Pourpresture [fr. *pourpris*, Fr., an enclosure], anything done to the nuisance or hurt of the Queen's demesnes, or the highways, etc., by enclosure or building, endeavouring to make that private which ought to be public.

The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the Crown; but where the *jus publicum* is violated it is a nuisance. Skene makes three sorts of this offence: (1) against the Crown; (2) against the lord of the fee; (3) against a neighbour.—2 *Inst.* 38; 1 *Reeves*, 156.

Pour seisir terres, an ancient writ whereby the Crown seized the land which the wife of its deceased tenant, who held *in capite*, had for her dower, if she married without leave; it was grounded on the statute *De Prærogativâ Regis*, 7.—17 *Edw. II.* st. 1, c. 4. It is abolished by 12 Car. II. c. 24.

Poursuivant, a king's messenger; those employed in martial causes were called *Poursuivants-at-Arms.*

There are, at present, in the Herald's Office, four poursuivants, distinguished by the names following:—

(1) *Rouge Croix*, instituted at an uncertain period, but generally considered to be the most ancient. The title was doubtless derived from the cross of St. George.

(2) *Blue Mantle.* An office instituted by Edward III. or Henry V., and named either in allusion to the colour of the arms of France or to that of the robes of the Order of the Garter.

(3) *Rouge Dragon.* This poursuivancy was founded by Henry VII. on the day before his coronation, the name being derived from the ensign of his ancestor, Cadwaladyr. He also assumed a red dragon as the dexter supporter of his arms.

(4) *Portcullis.* This office was instituted by the same monarch, from one of whose badges the title was derived.

As to the office of poursuivant of the Great Seal, see 37 & 38 Vict. c. 81.

Pourveyance, or **Purveyance,** the providing necessaries for the sovereign, by buying them at an appraised valuation in preference to all others, and even without the owner's consent. Indeed it was a royal right of spoil, and was long since abolished.—12 *Car. II.* c. 24; 3 *Hallam's Middle Ages,* c. 8, part 3, p. 148; and 1 *Hallam's Const. Hist.,* c. 6, p. 304.

Pourveyor, or **Purveyor,** a buyer; one who provided for the royal household.

Powdikes. Destroying them in the fens of Norfolk and Ely is felony by 22 Hen. VIII. c. 11.

Power, an authority which one person gives to another to act for him, or to do certain acts, as to make leases, raise portions, or the like; also to modify the use of an estate, of which he has the disposal; it is an authority enabling one person to dispose of an interest which is vested in another.—2 *Lill. Abr.* 339.

Powers are either Common Law authorities, declarations, or directions, operating only on the conscience of the persons in whom the legal interest is vested, or declarations or directions deriving their effect from the Statute of Uses. A power given by a will to A., an executor, to sell an estate, to whom no estate is devised, and a power given by an Act of Parliament to sell estates, as in the instance of the Land Tax Redemption Acts, are both Common Law authorities. The estate passes by force of the will or Act of Parliament, and the person who executes the power merely nominates the party to take the estate. A power of attorney is also a Common Law authority. A power to dispose of an estate or sum of money of which the legal estate is vested in another, is a power of the second sort. The legal interest is not divested by the execution of the power, but equity will compel the person seised of it to clothe the estate created with the legal right. Powers deriving their effect from the Statute of Uses are either given to a person who has an estate limited to him by the deed creating the power, or who had an estate in the land at the time of the execution of the deed; or to a stranger, to whom no estate is given, but the power is to be exercised for his own benefit; or to a mere stranger to whom no estate is given, and the power is for the benefit of others.

Powers are either—

(1) *Collateral,* which are given to strangers, i.e., to persons who have neither a present nor future estate or interest in the land. These are also called simply *collateral,* or *powers not coupled with an interest,* or *powers not being interests.* These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called *powers collateral.*—*Savile* v. *Blackett,* 1 *P. Wms.* 777.

(2) *Relating to the land,* which are either—

(α) *Appendant* or *appurtenant,* because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possesson, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself; or,

(β) *In gross,* which are given to a person who had an interest in the estate at the time of the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death amongst his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death for securing younger children's portions, are all powers in gross.

A power may, with reference to the particular estates in the land over which it extends, have different aspects; it may, in regard to one, be a power appendant; in respect to another, a power in gross. Thus where an estate is settled to A. for life, remainder to B. in tail, remainder to A. in fee, and A. has a power to jointure his wife after his death, this power is in gross as to the estate for life, but appendant or appurtenant as to the remainder in fee. It may affect the latter, but never can attach on the former.

An important distinction is established between *general* and *particular* powers. By

a general power we understand a right to appoint to whomsoever the donee pleases. By a particular power it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children.

A power is expounded strictly; therefore, if a man have power to make leases generally, this extends to make leases in possession only, and not in reversion.

Powers appendant may be destroyed by release, bargain, and sale, or feoffment; powers in gross, by feoffment or release; but powers simply collateral cannot be destroyed by the act of the person to whom they are given. As the appointor is merely an instrument, the appointee shall be in by the original deed.

Appointments by will are to be executed like other wills, and to be valid, although other required solemnities are not observed.—7 *Wm. IV.* & 1 *Vict.* c. 26, s. 10.

'A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution, or attestation or solemnity. But this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument, and nothing shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.'—22 & 23 *Vict.* c. 35, s. 12.

By the 37 & 38 Vict. c. 37, it is provided that appointments under powers shall be valid notwithstanding one or more objects are excluded, in certain cases.

Consult *Lord St. Leonards* or *Farwell* on '*Powers*'; and see ILLUSORY APPOINTMENT ACT, and MISTAKE.

Power of Attorney. See LETTER OF ATTORNEY.

Power of the County. See POSSE COMITATUS.

Poynding. See POINDING.

Poynings' Act, or STATUTE OF DROGHEDA, an Act of Parliament, made in Ireland, 10 Hen. VII. c. 22, A.D. 1495; so called because Sir Edward Poynings was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not.—12 *Rep.* 109; 3 *Hall. Const. Hist.* c. xviii. p. 361; 1 *Br. & Had. Com.* 112.

The Act was amended by 28 Hen. VIII. c. 4 (Irish), of which the effect is explained by 28 Hen. VIII. c. 20 (Irish): its principle was extended to private estate acts, and certain shipping, etc., acts, by 'Yelverton's Act,' 21 & 22 Geo. III. c. 48 (Irish).

Poynings' Laws. The above Act, and 10 Hen. VII. c. 4 (Irish), whereby bills could not be introduced into the Irish Parliament until they had been certified to, and approved by, the Sovereign of England, amended by 3 & 4 P. & M. c. 4 (Irish), and 11 Eliz. st. 3, c. 8 (Irish), and substantially repealed by 21 & 22 Geo. III. c. 47 (Irish).

Practice, the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to final judgment and execution, according to the principles and the rules laid down by the several courts. Practice has been said to be a word 'applying to all the proceedings by which a cause is brought to judgment' and execution; but this definition has been questioned in the House of Lords by a member of the House, who thus combats the view propounded by a most learned judge (Willes, J.). 'In its ordinary meaning it is undoubtedly distinguished from the pleadings; no unimportant part of the proceedings by which a cause is brought to judgment. The learned judge also says practice is no word of art. Here again I must beg leave to differ from him. Practice, even standing by itself, applies to a part of the proceedings of a court, which is sufficiently distinguishable from the rest to be the subject of books of practice.'—*Per* Lord Chelmsford in the case of the *Attorney-General* v. *Sillem*, on appeal from the Exchequer Chamber (10 *Jur. N. S.* 457). See also the judgment of Lord Chancellor Westbury, in the same case.

As to the practice of the Courts of Common Law, see *Day's Common Law Procedure Acts*, and *Chitty's Archbold's Practice;* of Courts of Equity, *Daniell's Chanc. Prac.* And as to the practice of the Supreme Court, see the Judicature Acts, 1873, 1875, and the rules of the Supreme Court, 1883, consolidating the schedule to the latter act, with the numerous amending rules made by the judges between 1875 and 1883. And see the titles

of the various proceedings in an action; e.g., PLEADING; SUMMONS; etc.

As to the practice of the County Courts, see the consolidating County Court Act of 1888, and the consolidating County Court Rules of 1889.

Practice Court. See BAIL COURT, and QUEEN'S BENCH.

Practitioner, he who is engaged in the exercise or employment of any art or profession.

Præceptories, a kind of benefices, so called because they were possessed by the more eminent Templars, whom the Chief Master by his authority created and called *Præceptores Templi.—Mon. Angl.* ii. 543.

Præcipe (*command*), a slip of paper upon which the particulars of a writ are written; it is lodged in the office out of which the required writ is to be issued.

A præcipe must be filed by the party issuing or his solicitor before a writ of execution is issued, which præcipe must contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, for execution, and the names of those against whom it issued, and must be signed by the party or solicitor issuing it (R.S.C. 1883, Ord. XLII., r. 12). For forms of such præcipes, see *Ibid.*, App. E.

Also, an original writ, commanding the defendant, in the alternative, to do the thing required, or show the reason why he has not done it; and the writ is drawn up in the form of a *præcipe* or command, to do something, or show cause to the contrary, giving the defendant his choice to redress the injury, or stand the suit.—3 *Bl. Com.* 273. It is abolished.

Præcipe in capite, a writ out of Chancery for a tenant holding of the Crown *in capite*, viz., in chief.—*Mag. Chart.* c. 24.

Præcipe quod reddat, the form of a writ, which extended as well to a writ of right as to other writs of entry or possession, beginning, '*Præcipe A., quod reddat B. unum, messagium,*' etc.—*O. N. B.* 13. Abolished.

Præcipe quod teneat conventionem, the writ which commenced the action of covenant in fines, which are abolished by 3 & 4 Wm. IV. c. 74.

Præcipe, tenant to the, a person having an estate of freehold in possession, against whom the *præcipe* was brought by a tenant in tail, seeking to bar his estate by a recovery. If the latter was tenant in tail in possession, it was usual for him to convey a freehold estate to any indifferent person against whom the præcipe was brought. See RECOVERY.

Præcipitium, the punishment of casting headlong from some high place.

Præcognita, things to be previously known in order to the understanding of something which follows.

Præda belli, booty, property seized in war.

Prædia stipendiaria, provincial lands belonging to the people.—*Civ. Law.*

Prædia tributaria, provincial lands belonging to the emperor.—*Ibid.*

Prædia volantia. In the duchy of Brabant, certain things movable, such as beds, tables, and other heavy articles of furniture, were ranked amongst immovables, and were called *prædia volantia*, or volatile estates.—2 *Bl. Com.* 428.

Prædial tithes [fr. *prædium*, Lat., ground], such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs.—2 *Bl. Com.* 23; 2 *Steph. Com.*

Prædict (*aforesaid*).—*Hob.* 6.

Prædium dominans, an estate to which a servitude is due; the ruling estate.—*Colquhoun's Roman Civil Law*, s. 937.

Prædium rusticum, heritage which is not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.—*Ibid.*, s. 937.

Prædium serviens, an estate which suffers or yields a service to another estate.—*Ibid.*, s. 937.

Prædium urbanum, a building or edifice intended for the habitation and use of man, whether built in cities, or in the country.—*Ibid.*, s. 937.

Præfectus Urbi; from the time of Augustus, an officer who had the superintendence of the city and its police, with jurisdiction extending one hundred miles from the city, and power to decide both civil and criminal cases. As he was considered the direct representative of the emperor, much that previously belonged to the *prætor urbanus* fell gradually into his hands.—*Ibid.*, s. 2395.

Præfectus Vigilum, the chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace, and even to larcenies. But he could inflict only slight punishments.—*Ibid.*

Præfectus villæ (*the mayor of a town*).

Præfine, the fee paid on suing out the writ of covenant, on levying fines, before the fine was passed.—2 *Bl. Com.* 350.

Præmium pudicitiæ, the consideration given by the seducer of a chaste woman for her defilement.—2 *P. Wms.* 452.

Præmunire [a barbarous word for *præmoneri*, Lat., to be forewarned]. It is an offence so called from the words of the writ preparatory to the prosecution thereof: *præ-*

munire facias A. B. (cause A. B. to be forewarned) that he appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ.

The statutes of *præmunire* were framed to encounter papal usurpation. The first of them was made in the twenty-seventh year of the reign of Edward III. (*Barr. on Stat.* 279), and was the foundation of all the subsequent statutes of *præmunire*, of which 16 Rich. II. c. 5, still unrepealed, is the 'Statute of Præmunire' generally so called, and incorporated by reference in subsequent statutes.

The original meaning of the offence is, then, introducing a foreign power into this land, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the sovereign alone long before the Reformation. At that time the penalties of *præmunire* were indeed extended to more papal abuses than before, as the kingdom then entirely renounced the authority of the see of Rome, though not all the corrupted doctrines of the Church of Rome.

The penalties of *præmunire* were subsequently applied to other heinous offences in no way connected with papal aggression, e.g.:

By 1 & 2 Ph. & M. c. 8, to molest the possessors of abbey lands, granted by Parliament to Hen. VIII. and Edward VI., was a *præmunire*.

To assert maliciously and advisedly, by speaking or writing, that both or either House of Parliament have or has a legislative authority without the Sovereign, is still a *præmunire* by 13 Car. II. c. 1.

By the Habeas Corpus Act, 31 Car. II. c. 2, s. 11, it is still a *præmunire* to send any subject of this realm a prisoner, under certain exceptions in the act specified, into parts beyond the seas. See HABEAS CORPUS.

The punishment of the offence is, that, from the conviction, the defendant be out of the Crown's protection, and his lands and tenements, goods and chattels, are forfeited to the Crown; and that his body shall remain in prison during the royal pleasure, or, as some authorities have it, during life. It is not lawful, however, to kill any person attainted in a *præmunire*.—4 *Br. & Had. Com.* 101 *et seq.*; 4 *Steph. Com.*

Præmuniti, i.e., *præmoniti*. Co. Litt. 129. —(Forewarned, forearmed.)

Prænomen, the name of a person, distinguishing him from others of the same family. —*Civil Law.*

Præpositus, an officer next in authority to the alderman of a hundred, called *præpositus regius*; or a steward or bailiff of an estate, answering to the *wicnere*.—*Anc. Inst. Eng.*

Also the person from whom descents are traced under the old canons.

Præpositus ecclesiæ, a church-reeve or churchwarden.

Præpositus villæ, a constable of a town, or petty constable.

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis. Co. Litt. 113.—(Prescription is a title by authority of law, deriving its force from use and time.)

Præsentia corporis tollit errorem nominis: et veritas nominis tollit errorem demonstrationis. Bac. Max. 224.—(The presence of the body cures error in the name: the truth of the name cures an error of description.)

Præstat cautela quam medela. Co. Litt. 304.—(Caution is better than cure.)

Præsumitur pro negante. (It is presumed for the negative.) The rule of the House of Lords when the numbers are equal on a motion.

Præsumptio, intrusion or the unlawful taking of anything.—*Leg. Hen. I.* c. 11.

Præsumptio violenta valet in lege. Jenk. Cent. 56.—(Strong presumption is valid in law.)

Prætor Fidei-Commissarius, the judge at Rome, who enforced the performance of all fiduciary obligations and confidence. See 1 *Steph. Com.*

Pragmatic sanction, a rescript or answer of the Sovereign, delivered by advice of his council to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer given to an individual is simply called a *rescript*.—*Civ. Law.*

Pratique [fr. *practica*, Ital.], a license for the master of a ship to traffic in the ports of Italy upon a certificate that the place whence he came is not annoyed with any infectious disease.—*Encyc. Lond.*

Pratum bovis, or **Carucæ**, a meadow for oxen employed in tillage.

Praxis, use, practice.

Praxis judicum est interpres legum. Hob. 96.—(The practice of the judges is the interpreter of the laws.)

Prayer Book. See ACT OF UNIFORMITY; COMMON PRAYER.

Pray in aid, a petition made in a court of justice for the calling in of help from another that has an interest in the cause in question.

Preamble, introduction, preface; also, the beginning of an act of parliament, etc., serving to pourtray the intents of its framers, and the mischiefs to be remedied. See *Maxwell on Stat.*, 2nd ed. Preambles, which in early Acts (see, e.g., 4 & 5 W. & M. c. 18, and the

Irish Act, 1 Car. I. c. 1), and even in comparatively modern Acts (see, e.g., 3 & 4 Vict. c. 77), frequently extended to very great length, are now almost entirely discontinued.

Pre-audience, the right of one to be heard before another; as of the Attorney-General and Solicitor-General before Queen's Counsel, of Queen's Counsel before other barristers, and of barristers generally in the order of their call.

Prebend, a stipend granted in cathedral churches; also, but improperly, a prebendary. A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it. The term prebend is generally confounded with canonicate: but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend.—2 *Steph. Com.*

Prebenda, or **Probanda**, provisions, provender.

Prebendary, a stipendiary of a cathedral.

Precariæ, or **Preces**, day-works which the tenants of certain manors are bound to give their lords in harvest time. *Magna precaria* was a great or general reaping day.—*Cowel.*

Precarious loan. See next title.

Precarium, a contract by which the owner of a thing, at another's request, gives him the thing to use as long as the owner shall please. This was distinguished from an ordinary gratuitous loan, and in the Roman Law gave rise to different obligations on the part of the borrower.—See *Story on Bail.*, ss. 227, 253, *b.*

Precatory words, expressions in a will, praying or recommending that a thing be done; e.g., that the name of a testator be taken by a legatee in addition to a legatee's own.

Precepartium, the continuance of a suit by consent of both parties.—*Cowel.*

Precedence, or **Precedency**, the act or state of going before; adjustment of place.

The rules of precedence may be reduced to the following list, in which those marked * are entitled to the rank here allotted them by 31 Hen. VIII. c. 10; marked † by 1 W. & M. c. 1; marked ‖ by letters-patent, 9, 10, & 14 Jac. I., which see in *Seld. Tit. of Hon.* ii. 5, 46; marked ‡ by ancient usage and established custom.—*Camden's Brit.*, tit. '*Ordines*'; *Milles's Cat. of Hon.* 1610; and *Chamberlayne's Prest. St. of Eng.* b. 3, c. iii.

* The Queen's children and grandchildren.
* ———— consort.
* ———— uncles.
* The Queen's nephews.
* Archbishop of Canterbury (*a*).
* Lord High Chancellor or Keeper, if a baron.
* Archbishop of York.
* Lord Treasurer.
* Lord President of the Council.
* Lord Privy Seal.
} if barons.
* Lord Great Chamberlain. But ee Private Stat. 1 Geo. I. c. 3.
* Lord High Constable.
* Lord Marshal.
* Lord Admiral.
* Lord Steward of the Household.
* Lord Chamberlain of the Household.
} above all peers of their own degree.
* Dukes.
* Marquesses.
‡ Dukes' eldest sons.
* Earls.
‡ Marquesses' eldest sons.
‡ Dukes' younger sons.
* Viscounts.
‡ Earls' eldest sons.
‡ Marquesses' younger sons.
* Secretary of State, if a bishop.
* The Bishop of London.
———— Durham.
———— Winchester.
* Bishops.
* Secretary of State, if a baron.
* Barons.
† Speaker of the House of Commons.
† Lords Commissioners of the Great Seal.
‡ Viscounts' eldest sons.
‡ Earls' younger sons.
‡ Barons' eldest sons.
‖ Knights of the Garter.
‖ Privy Councillors.
‖ Chancellor of the Exchequer.
‖ Chancellor of the Duchy of Lancaster.
‖ Chief Justice of the Queen's Bench.
‖ Master of the Rolls.
For the present precedence of the Judges of the Court of Appeal and of the High Court of Justice, see Jud. Act, 1873, s. 11, and Jud. Act, 1875, s. 6.
‖ Knights Bannerets, royal.
‖ Viscounts' younger sons.
‖ Barons' younger sons.
‖ Baronets.
‖ Knights Bannerets.
‡ Knights of the Bath.
‡ Attorney-General.
‡ Solicitor-General.
‡ The Queen's Advocate-General.
‡ Serjeants-at-law.

(*a*) The judges of assize, while on circuit, take precedence of every subject.

‡ Knights Bachelors.
|| Baronets' eldest sons.
|| Knights' eldest sons.
|| Baronets' younger sons.
|| Knights' younger sons.
‡ Colonels.
‡ Doctors, with whom, it is said, rank barristers.
‡ Esquires.
‡ Gentlemen.
‡ Yeomen.
‡ Tradesmen.
‡ Artificers.
‡ Labourers.

Precedence, Patent of, a grant from the Crown to such barristers as it thinks proper to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents.—3 *Steph. Com.*

Precedent condition, such as must happen or be performed before an estate can vest or be enlarged. See CONDITION PRECEDENT.

Precedents, authorities or examples to be followed by courts of justice. Each of the three superior courts of common law was by the practice of the law bound to follow a decision of its own, or of either of the others on a point of law, and decision of its own on a point of practice; but it was not bound to follow the decisions of another co-ordinate court on a point of practice. The same rules prevailed in the courts of equity. The Divisions of the High Court being parts of one and the same Court, each Division ordinarily considers itself bound by the decisions of the other Divisions upon points of practice as well as of law; and so of each Divisional Court; but in more than one case where there was no appeal, a Divisional Court, inclined to disagree with a prior judgment of another Divisional Court upon the same point, has been strengthened in number, and so strengthened, has declined to follow such prior judgment. See *Winyard* v. *Toogood*, 52 *L. J. M. C.* 25.

The House of Lords is absolutely bound by its own prior decisions, although decided, on an equality of votes, in the negative, and nothing but an act of parliament will remove them. The decisions of a judge at Nisi Prius are not considered binding. Irish decisions and the decisions of foreign tribunals may be cited in default of English authorities, but they are not binding.

Precept, a rule authoritatively given; a mandate; a command in writing by a justice of the peace or other officer, for bringing a person or record before him; the direction of a sheriff to the proper officer to proceed to the election of members of parliament; a command to a sheriff to empannel a jury; also a provocation whereby one incites another to commit a felony.—*Cowel.*

Preces primariæ, or **Primæ,** a right of the Crown to name to the first prebend that becomes vacant after the accession of the Sovereign, in every church of the empire. This right was exercised by the Crown of England in the reign of Edward I.—2 *Steph. Com.*

Precinct, a constable's district. 2. The immediate neighbourhood of a palace or court.

Precipe. See PRÆCIPE.

Precludi non (*not to be barred*), was the technical name of the commencement of a replication to a plea in bar (1 *Chit. Pl.* 627, 752), abolished by C.L.P. Act, 1852, 15 & 16 Vict. c. 76, s. 66.

Precognition, in Scotland, is the 'proof' of a witness committed to writing for use upon his examination. In criminal cases, the preliminary examination of witnesses usually conducted under the superintendence of the procurator fiscal.

Preconization [fr. *præconium*, Lat., the office of a crier], proclamation.

Pre-contract. Where one of the parties to a marriage was under a prior agreement to marry a third person, such prior agreement was called a pre-contract. It was a canonical impediment to the marriage of either party. The ecclesiastical courts would formerly enforce this agreement, by compelling the parties to a public marriage, and if one of them had already married, such prior marriage would be void *ab initio;* but until thus avoided it was good. See 32 Hen. VIII. c. 28, and 2 & 3 Edw. VI. c. 23, s. 2; *Bishop on Marriage and Divorce*, s. 53.

Predecessor, one who has preceded another, *Burt. Com. pl.* (378); the correlative of successor under the Succession Duty Act (16 & 17 Vict. c. 51, s. 2).

Predial. See PRÆDIAL.

Predicament, the condition of things concerning which a logical proposition may be stated.

Predicate (*n. s.*), that which is said concerning the subject in a logical proposition, as, the law is the perfection of common sense; perfection of common sense being affirmed concerning the law, (the subject) is the predicate or thing predicated.

Predicate (*v. a.*), to affirm logically.

Pre-emption, Right of, the power of buying a thing before others; a privilege formerly allowed to the royal purveyor, but abolished by 12 Car. II. c. 24.

Prefer, to apply, to move for; as, 'to prefer for costs,' is a phrase for 'to apply for costs.'

Preferences, Fraudulent. See FRAUDULENT PREFERENCES.

Preferential or **preference shares** or **stock**, shares or stock in a company which have or has priority as to payment of dividends of a fixed amount over the ordinary shares. The dividends are usually contingent upon the profits of each year, or half-year. In some cases, however, the arrears of dividend form an accumulating debt by the ordinary to the preference shareholders, the preference being described as a 'non-contingent' or a 'cumulative' preference. And see DEFERRED SHARES.

Preferential Payments, in bankruptcy, administration of estates of persons dying insolvent, or winding up of a company:—One year's rates and taxes, four months' salaries of clerks up to fifty pounds, and two months' wages of labourers or workmen, up to twenty-five pounds. See the Preferential Payments in Bankruptcy Act, 1888, 51 & 52 Vict. c. 62 (replacing the Companies Act, 1883, s. 40), subsections 1 & 2 of the Bankruptcy Act, 1883, and the Bankruptcy (Agricultural Labourers' Wages) Act, 1886), by which these debts are directed to be paid in priority to all others. As to *improper* preferential payments, see FRAUDULENT PREFERENCE.

Pregnancy, the state of having conceived, the most common signs of which are vomiting and suppression of the monthly discharge. It may be an 'illness' preventing the attendance of a witness. (*Reg.* v. *Wellings*, 3 *Q.B.D.* 426.)

Pregnancy, Plea of. When a woman is capitally convicted, and pleads her pregnancy, execution will be respited until she be delivered. See JURY-WOMEN.

Pregnant negative. See NEGATIVE PREGNANT.

Prejudice, Without, is a term given to overtures and communications between litigants before action, or after action, but before trial or verdict. The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offer, *without prejudice*, to pay half the claim, the plaintiff must not rely on the offer as an admission of his having a right to *some* payment.

Prelate, an archbishop or bishop.

Prelector, a reader; a lecturer.

Preliminary Act, a document stating the time and place of a collision between vessels, the names of the vessels, and other particulars required to be filed by each solicitor in actions for damage by such collision. See R. S. C. 1883, Ord. XIX., r. 28.

Premier, a principal minister of state; the prime minister.

Premises, propositions antecedently supposed or proved; also houses or lands; also that part in the beginning of a deed, which sets forth the grantor or grantee, and the land or thing granted or conveyed.

Premium, a consideration; something given to invite a loan or a bargain; as the annual payment upon insurances; the consideration paid to the assignor by the assignee of a lease, or to the transferor by the transferee of shares or stock, etc.

Premunire. See PRÆMUNIRE.

Prender [fr. *prendre*, Fr.], to take anything as of right before it is offered.

Prender de baron (*to take a husband*).—*Cowel.*

Prepense, forethought, preconceived, contrived beforehand. See MALICE.

Prerogative, a peculiar or exclusive privilege. See QUEEN.

Prerogative Court. The two archbishops have each of them a prerogative court. The appeal is to the Privy Council.—2 & 3 *Wm. IV.* c. 92. But see 20 & 21 Vict. c. 77, s. 4, which took away their jurisdiction in testamentary matters.—2 *Steph. Com.*

Prerogative writs, processes issued upon extraordinary occasions on proper cause shown. They are the writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus*, and *certiorari*.

Presbyter, a priest, elder, or honourable person.

Presbyterian, a presbytery; that part of the church where divine offices are performed, applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy; while the laity were confined to the body of the church.—*Mon. Angl.* i. 243.

Presbyterians, a sect of Christians chiefly to be found in Scotland and Ireland (see 34 Vict. c. 24), who do not acknowledge the authority of bishops.

Prescription [fr. *præscribo*, Lat.], rules produced and authorised by long usage. It is known in the Roman law as *usucapio*.

Title by prescription arises from a long-continued and uninterrupted possession of property, and is thus defined by Sir Edward Coke (1 *Inst.* 113 *b.*), *præscriptio est titulus, ex usu et tempore substantiam capiens, ab auctoritate legis.*

Every species of prescription, by which property is acquired or lost, is founded on the presumption that he who has had a quiet and uninterrupted possession of anything for a long period of years, is supposed to have a just right, without which he would not have been suffered to continue in the enjoyment of it. For a long possession may be considered as a better title than can commonly be produced, as it supposes an acquiescence in all other claimants; and that acquiescence

also supposes some reason for which the claim was forborne.—1 *Cruise's Dig.* tit. xxxi. '*Prescription*,' c. i., s. 4, p. 421.

There are two kinds of prescription, viz.: (1) *negative*, which relates to realty or corporeal hereditaments, whereby an uninterrupted possession for a given time gives the occupier a valid and unassailable title, by depriving all claimants of every stale right and deferred litigation, now mainly governed by 3 & 4 Wm. IV. c. 27; and (2) *positive*, which relates to incorporeal hereditaments, and originated at the common law from immemorial or long usage only. Positive prescription is divided into (1) that which has been exercised by a person and his ancestors, or by a body corporate and their predecessors, and is a personal right; or (2) that which has been attached to the ownership of a certain estate, and is only exercisable by those seised of the fee-simple of such estate, technically denominated a prescription in a *que* estate.

Positive prescription has been greatly modified by the statutes 2 & 3 Wm. IV. c. 71; 2 & 3 Wm. IV. c. 100; and 4 & 5 Wm. IV. c. 88.

Prescription and custom are frequently confounded in common parlance, arising perhaps from the fact that immemorial usage was essential to both of them; but, strictly, they materially differ from one another, in that custom is properly a local impersonal usage, such as Borough-English, or Postremogeniture, which is annexed to a given estate, while prescription is simply personal, as that a certain man and his ancestors, or those whose estate he enjoys, have immemorially exercised a right of pasture-common in a certain parish. Again, prescription has its origin in a grant, evidenced by usage, and is allowed on account of its loss, either actual or supposed, and therefore only those things can be prescribed for which could be raised by a grant previously to 8 & 9 Vict. c. 106, s. 2; but this principle does not necessarily hold in the case of a custom.

The common law laid down the following rules concerning *positive* prescription:—

(1) The only property claimable by positive prescription is an incorporeal hereditament.

(2) It must be founded on actual usage or enjoyment; for a mere claim will not establish the right.

(3) The use or enjoyment must have been continuous and peaceable; although an interruption of comparatively short duration will not destroy it.

(4) The usage must have been from time immemorial, or from time whereof the memory of man runneth not to the contrary, which is held to be from the beginning of the reign of Richard I.

(5) The prescription must be certain and reasonable.

(6) It must be laid either in a man and those whose estate he enjoys in certain property, called, as we have just seen, prescribing in a *que* estate, or in a man and his ancestors, or in a body corporate and their predecessors.

Here, a distinction should be marked:—

If a person prescribe in a *que* estate (that is, in himself and those whose estate he holds), nothing is claimable by this prescription, but such things as are incident, appendant, or appurtenant to lands; for it would be absurd to claim anything as the consequence, or appendix of an estate, with which the thing claimed has no connection; but if he prescribe in himself and his ancestors, he may prescribe for anything whatsoever that lies in grant; not only for things appurtenant, but also such as may be in gross.

(7) A prescription in a *que* estate must always be laid in him that is tenant in fee.

(8) It cannot be for a thing which cannot be raised by grant.

(9) That which arises by matter of record cannot be prescribed for, but must be claimed by grant entered on record; such as, for instance, the royal franchise of felons' goods, and the like. These, not being forfeited till the matter on which they arise is found by the inquisition of a jury, and so made a matter of record, the forfeiture itself cannot be claimed by an inferior title. But the franchises of treasure-trove, waifs, estrays, and the like, may be claimed by prescription; for they arise from private contingencies, and not from any matter of record.

(10) A person cannot prescribe to do a wrong, or anything that would be a nuisance to others; *or* against an Act of Parliament, for that is the highest proof and matter of record in law; *or* against another's prescription.

(11) When a man prescribes for anything in himself and his ancestors, the prescription will descend only to the blood of that line of ancestors in whom he so prescribes; but if he prescribe for it in a *que* estate, it will be inheritable precisely in the same manner as that estate, since *accessorius sequitur naturam sui principalis*. See *Gale on Easements, by Gibbons; Goddard on Easements;* and title LIMITATION OF ACTIONS.

Prescription, Corporations by, those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the city of London.

Presentation, the showing or delivering of

a thing to be presented (1 *C. L. Rep.* 166). It is also equivalent to corporal seisin of land, and is the offering a person to the ordinary to be instituted to a benefice. It must be in writing (29 Car. II. c. 3), and is in the nature of letters-missive to the ordinary.

The Sovereign, as *protector ecclesiæ*, is the patron paramount of all benefices which do not belong to other patrons, and usually presents by letters-patent (26 Hen. VIII. c. 1; 1 Eliz. c. 1). The Crown possesses the right of revoking its presentation at any time before induction. A revocation may be the consequence either of a formal act, or of the demise of the Crown, or the death of the presentee before induction. The Lord Chancellor, or Lord Keeper of the Great Seal, for the time being, has the right to present to all benefices appertaining to the Crown, of or below the value of twenty pounds, in the books of first fruits, according to the valuation in the time of Henry VIII. There is no difference in the form of a presentation by the Crown or Chancellor, except that, for the most part, the one is *mandantes*, the other *rogantes*.

With regard to other patrons, the right of presentation is sometimes confounded with that of nomination; but presentation is the offering a person to the bishop, while nomination is the offering such a person to the patron. These two rights may co-exist in different persons; thus, where an advowson is vested in trustees, they have the right of presentation, while the right of nomination is in the *cestui que trust*. So, in the case of a mortgage of an advowson, the mortgagee has the right of presentation, while the mortgagor has the right of nomination. Yet the trustees or the mortgagee must judge of the qualification of the nominee.—*Mirehouse on Advow.* 136.

All persons seised in fee, in tail, or for life, or possessed of a term for years of a manor to which an advowson is appendant, or of an advowson in gross, may present; and this right descends by course of inheritance from heir to heir, or passes to a devisee or purchaser, unless the benefice become vacant in the lifetime of the patron, when the void turn devolves upon the personal representatives (*Mirehouse* v. *Rennell*, 7 *Bli.* 241), being, indeed, a personal right or interest disannexed from the estate in the advowson, and vested in the patron simply as an individual. And where the incumbent is also patron, if he died seised of the advowson, without having devised it, his heir, not his executor, is entitled to present, because the descent of the heir, and the fall of the avoidance to the executor happening at the same time, the elder right prevails. If a bishop die, a church being vacant in his lifetime, the Crown exercises its prerogative to present.—*Co. Litt.* 388 *b*.

Where a person has a grant of the next presentation to a church, it is considered as a chattel-real, which, if not disposed of, will vest in his personal representatives.

Joint-tenants and tenants in common should present jointly; and if co-parceners cannot agree, the eldest sister is entitled to the first turn, the second sister the second turn, *et sic de cæteris*, every one in turn according to seniority, and this part which the oldest thus takes by virtue of her priority of age is called the *enitia pars*.

By 7 Anne, c. 18, s. 2, if co-parceners, or joint-tenants, or tenants in common, be seised of an estate of inheritance in the advowson of any church, or vicarage, or other ecclesiastical promotion, and a partition is made between them, to present by turns, every one shall be taken to be seised of his separate part to present in his turn.

An infant at any age may nominate or present.—*Hearle* v. *Greenbank*, 3 *Atk.* 710; *Arthington* v. *Coverly*, 3 *Abr. Cas. E.* 518.

A corporation aggregate presents by the corporate name under their common seal.

A patron may present himself (see *Walsh* v. *Bishop of Lincoln*, *L. R.* 10 *C. P.* 518).

A presentation may be revoked or varied before admission and institution, since it does not vest any right, and does not confer, before institution, any interest whatever.

The right of a papist to present devolves upon the two Universities.—10 *Geo. IV.* c. 7, ss. 16, 17, 18.

See *Chitty's Statutes*, vol. i., tit. '*Church and Clergy*.'

Presentative advowson. See ADVOWSON.

Presentee, one presented to a benefice.

Presenter, one that presents.

Presentment, generally taken, a very comprehensive term, including not only presentments, properly so called, but also inquisitions of office, and indictments by a grand jury; properly speaking, the notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown; as the presentment of a nuisance, a libel, and the like, upon which the officer of the Court must afterwards frame an indictment before the party presented can be put to answer it.

Presentments are also made in courts-leet and courts-baron, before the stewards.—1 *Steph. Com.*

Presentment of bill of exchange, cheque,

or **promissory note,** the presenting of a bill by the holder to the drawee for acceptance, or to the acceptor or an indorser for payment, of a cheque to the banker for payment, and of a note to the maker or indorser for payment.

The law of this subject is regulated by the 'codifying' Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, as follows:—

Presentment of bill for acceptance. Presentment is necessary if the bill is payable after sight, *or* if it be expressly stipulated for by the bill, *or* if it be drawn payable elsewhere than at the residence or place of business of the drawee, but in no other case (s. 39). When a bill payable after sight is negotiated the holder must either present or negotiate it within a reasonable time (s. 40).

'The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue.' Presentment must be made to each of many drawees, not being partners or having authorised one to accept for all. 'Where authorised by agreement or usage, a presentment through the post is sufficient.' Presentment is excused by the death or bankruptcy of the drawee, or 'where, after the exercise of reasonable diligence, such presentment cannot be effected,' but 'the fact that the holder has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment' (s. 42).

Presentment of bill for payment. Unless a bill be duly presented for payment, or presentment for payment be dispensed with by the drawee being a fictitious person, or by waiver or impracticability of presentment, the drawer and indorsers are discharged.

'Where the bill is not payable on demand, presentment must be made on the day it falls due.' A bill payable on demand must be presented within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. Presentment must be made at the proper place at a reasonable hour on a business day. 'Where authorised by agreement or usage, a presentment through the post office is sufficient' (ss. 45, 46).

Presentment of cheque for payment. A cheque must be presented within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable (ss. 45, 46, 73); and all the provisions of the Bills of Exchange Act, 1882, applicable to a bill of exchange *payable on demand* apply to a cheque also (s. 73). A reasonable time is, in general, if customer and banker reside in the same place, the day after the cheque is received (*Alexander* v. *Burchfield*, 7 *M. & G.* 161).

Presentment of note for payment. Presentment within a reasonable time of indorsement is necessary in order to render an indorser liable, but not in order to render the maker liable, unless the note be made payable at a particular place (ss. 86, 87).

Presentment in copyholds. The 4 & 5 Vict. c. 35, s. 89, enacts, that every surrender and deed of surrender to be accepted by the lord, and every will and codicil, a copy whereof shall be delivered to the lord, steward, or deputy, either at the court to be holden without the presence of homages (under s. 86), or out of court, and every gift and administration by the lord or steward (under ss. 87, 88), shall be forthwith entered on the rolls of the manor; and every such entry shall be taken to be made in pursuance of a presentment at a court by the homage assembled. A presentment is not essential to the validity of any administration (s. 90).

When a surrender was taken out of court, the presentment, by the general custom of manors, was to be made at the succeeding general court, or if there were a special custom for it, at the second or third court day or within a year, or alternatively at the next court, or at the next court after a year.—1 *Scriv. Cop.* 222.

The surrender, and every other document relating to the title, on being presented in court, should have been endorsed thus:—'Presented and enrolled at a court held for the manor of ——, the —— day of ——,' and then undersigned by at least two of the homage. But presentments are now, as we have seen, abolished. See also 1 *Steph. Com.*

Presents. '*These presents*' is the phrase by which a deed mentions itself, the thing then actually made or spoken of.

Present use, one which has an immediate existence, and is at once operated upon by the Statute of Uses.

President, one placed in authority over others; one at the head of others; a governor; a chairman.

President of the Council, a great officer of state; a member of the Cabinet. He attends on the sovereign, proposes business at the council-table, and reports to the sovereign the transactions there.—1 *Bl. Com.* 230.

Pressing seamen. See IMPRESSING MEN.

Pressing to death. See PEINE FORTE ET DURE.

Prest, a duty in money that was to be

paid by the Sheriff on his account, in the Exchequer, or for money left or remaining in his hands.—2 & 3 *Edw. VI.* c. 4; *Cowel.*

Prestation-money, a sum of money paid by archdeacons yearly to their bishops; also purveyance.—*Cowel.*

Prestimony, or **Præstimonia,** a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators.—*Canon Law.*

Prest money, a payment which binds those who receive it.—*Cowel.*

Presumptio juris et de jure. See next title.

Presumption, a supposition, opinion, or belief previously formed.—*Wood's Inst.* 599.

Presumptions are said to be either (1) *juris et de jure,* or (2) *juris,* or (3) *hominis vel judicis.* (1) The presumption *juris et de jure* is that where law or custom establishes the truth of any point, on a presumption that cannot be overcome by contrary evidence; thus a minor or infant, with guardians, is deprived of the power of acting without their consent, on a presumption of incapacity, which cannot be rebutted. (2) The *præsumptio juris* is a presumption established in law till the contrary be proved, as the property of goods is presumed to be in the possessor; every presumption of this kind must necessarily yield to contrary proof. (3) The *præsumptio hominis vel judicis* is the conviction arising from the circumstances of any particular case. See *Best on Presumptions.*

Presumption of life or death. Where a person is once shown to have been living, the law will in general presume that he is still alive, unless after a lapse of time considerably exceeding the ordinary duration of human life; but if there be evidence of his continuous unexplained absence from home and of the non-receipt of intelligence concerning him for a period of seven years, the presumption of life ceases. But although a person who has not been heard of for seven years under such circumstances is presumed to be dead, the law raises no presumption as to the time of his death. And, therefore, if any one has to establish the precise time during those seven years at which such person died, he must do so by evidence.—*Doe* v. *Nepean,* 5 *B. & Ad.* 86; *Nepean* v. *Doe,* 2 *M. & W.* 894. See also 19 Car. II. c. 6, and as to Scotland the Presumption of Life Limitation (Scotland) Act, 1891, 54 & 55 Vict. c. 29.

Presumption of survivorship. The devolution of property frequently depends upon the survivorship of one of two or more persons who perish by the same calamity, such as shipwreck, battle, fire, collision of trains, etc., when there is no direct evidence as to the survivorship. In such cases the law of some countries has recourse to artificial presumptions, based upon the probabilities of survivorship resulting from age and sex; but the law of England recognises no such presumption, but requires proof of survivorship from the person who relies upon it, and, in the absence of evidence, it considers that both or all of the persons so dying perished at the same time, and that neither transmitted his rights to the other or others.—*Wing* v. *Angrave,* 8 *H. L. C.*

Presumptive evidence. See CIRCUMSTANTIAL EVIDENCE.

Presumptive heir, one who, if the ancestor should die immediately, would be his heir: but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

Presumptive title. A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis,* Lat.), without any apparent right, or any pretence of right, to hold and continue such possession. This may happen when one man disseises another; or where, after the death of the ancestor, and before the entry of the heir, a stranger abates and holds out the heir. The law assumes that the actual occupant of land has the fee-simple in it, unless there be evidence rebutting such presumption, or his possession be properly explained and shown to be consonant with the right of the true proprietor of the reversionary fee. Such a presumption, in the absence of any satisfactory proof to the contrary, will sustain an action for a trespass by a wrongdoer, and will indeed be strengthened, by lapse of time, into a title complete and indefeasible.

This assumption is based on the well-known feudal maxim, that seisin must be the basis or standpoint in the deduction of every title except in the case of descent.

Pret à usage [Fr.], loan for use; *commodatum.*

Pretensed right: where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretensed right or title is said to be in him who so claims and sues for the same.—*Mod. Cas.* 302.

Pretensed Title Statute, 32 Hen. VIII. c. 9, s. 2. It enacts that no one shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits

thereof for one whole year before such grant, or hath been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor. See 4 *Br. & Had. Com.* 150.

Preter legal, not agreeable to law.

Preterition, the entire omission of a child's name in the father's will, which rendered it null—exheredation being allowed, but not preterition.—*Civ. Law, Colquhoun,* s. 1304.

Pretium affectionis, an imaginary value put on a thing by the fancy of the owner in his affection for it.—*Bell.*

Pretium sepulchri, mortuary, which see.

Pretium succedit in loco rei. 2 Buls. 321.—(The price succeeds in the place of the thing.)

Prevarication, a collusion between an informer and a defendant, in order to a feigned prosecution.—*Cowel.* Also, any secret abuse committed in a public office or private commission;—also, the wilful concealment or misrepresentation of truth, by giving evasive or equivocating evidence.

Prevention [fr. *prævenio,* Lat.], the right which a superior person or officer has to lay hold of, claim, or transact, an affair prior to an inferior one, to whom otherwise it more immediately belongs.—*Canon Law Term.*

Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112. This Act, which was amended by the Prevention of Crimes Act, 1879, 42 &43 Vict. c. 5, repealed and replaces the Habitual Criminals Act, 1869, 32 & 33 Vict. c. 99, and provides for the keeping of a register of criminals, and the photographing of all persons convicted of crime with a view to their identification, and for subjecting to the supervision of the police persons who have been twice convicted of crime, and for the amendment of the law with regard to licenses under the Penal Servitude Acts. See also PENAL SERVITUDE.

Preventive Service, the Coast Guard. See 19 & 20 Vict. c. 83.

Price Current, a list or enumeration of various articles of merchandise, with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, etc.

Pricking for Sheriffs. See SHERIFFS.

Pride-gavel, a rent or tribute.—*Tayl. Hist. Gavelk.* 112.

Priest, a minister of a church (13 & 14 Car. II. c. 4, s. 14). A person under 24 years of age cannot be ordained a priest.—44 *Geo. III.* c. 43. See CLERGY.

Primæ, or Primariæ Preces. See PRECES PRIMARIÆ.

Primæ impressionis. A case *primæ impressionis* (of the first impression) is a case of a new kind, to which no established principle of law directly applies, and which must be decided entirely by reason as distinguished from authority. See COMMON LAW, and the remarks of *Parke, B.,* in *Mirehouse* v. *Rennell,* 8 *Bing.* 515, referred to under that title.

Primâ-facie evidence, that which not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour that it must prevail if it be credited by the jury, unless it be rebutted, or the contrary proved; *conclusive* evidence, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established.

Prima tonsura (*the first crop*).

Primage, a certain allowance paid by the shipper or consignor of goods to the master of a vessel for loading them.—*Cowel*; 3 *Kent Com.* 232, n., and see *Maclachlan on Shipping.*

The amount varies according to the custom of the place.

Primaria Ecclesia, the mother church.—1 *Steph. Com.*

Primary conveyances, original conveyances; they are—

(1) Feoffments. (2) Grants. (3) Gifts. (4) Leases. (5) Exchanges. (6) Partitions. Consult 1 *Steph. Com.*

Primary Evidence, the best evidence as distinguished from secondary evidence.

Primate, a chief ecclesiastic; part of the style and title of an archbishop; thus the Archbishop of Canterbury is styled Primate of all England; the Archbishop of York is Primate of England.

Primer election, first choice.

Primer fine. On suing out the writ or *præcipe,* called a writ of covenant, there was due to the Crown, by ancient prerogative, a *primer fine,* or a noble for every five marks of land sued for; that was one-tenth of the annual value.—1 *Steph. Com.*

Primer seisin, a feudal burthen, only incident to the king's tenants *in capite,* and not to those who held of inferior or mesne lords. It was a right which the king had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age) one whole year's profits of the lands, if they were in immediate possession; and half-a-year's profits, if they were in reversion, expectant on an estate for life. It was incident to socage-tenants *in capite,* as well as those who held by knight-service. It was abolished by 12 Car. II. c. 24.

Primicerius, the first of any degree of men.—*Mon. Angl.* i. 838.

Primitiæ, the first fruits which were pre-

sented to the gods by the ancients; also, the profits of a living during the first year after avoidance, formerly taken by the Crown. —*Steph. Com.*, 7th ed., i. 199; ii. 532.

Primo Beneficio, etc., a writ directing a grant of the first benefice in the sovereign's gift.—*Cowel.*

Primo excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis. Co. Litt. 68.—(The full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons.)

Primogeniture, seniority, eldership, state of being first-born.

The right of primogeniture obtaining in the United Kingdom is that right whereby the eldest son succeeds to all the real estate of an intestate parent. An analogous right of succession is also very frequently given by will, and given and preserved by marriage or other settlement. The right was not acknowledged by the Romans; sons and daughters all shared equally the property of their parents; and in continental countries exists in a modified form only, if at all. See *Eyre Lloyd's 'Rights of Primogeniture and Succession.'* In England the customs of gavelkind and Borough-English are almost the only exceptions to this Norman rule of inheritance.

Primum decretum, a provisional decree.

Prince [fr. *princeps*, Lat.], a sovereign; a chief ruler of either sex. 'Queen Elizabeth, a *prince* admirable above her sex for her princely virtues.'—*Camden.*

Princeps et republica ex justâ causâ possunt rem meam auferre. 12 Rep. 13.—(The prince and the republic, for a just cause, can take away my property.) For application of this maxim, see LANDS CLAUSES ACT.

Princeps mavult domesticos milites quam stipendiarios bellicis opponere casibus. Co. Litt. 69.—(A prince, in the chances of war, had rather employ domestic than foreign troops.)

Prince of Wales, the eldest son of the Sovereign. He is the heir-apparent to the Crown; he is created Earl of Chester, and is Duke of Cornwall by inheritance (during the life of the Sovereign), without any new creation. As to rights of the heir-apparent to submarine mines and minerals in Cornwall, see 21 & 22 Vict. c. 109; see also 13 & 14 Vict. c. 78; as to the obligation of his creditors to claim payment of debts within a short period of their being incurred on pain of the debts being barred, see 35 Geo. III. c. 125, and as to the provision for the establishment of His Royal Highness and of the Princess of Wales, see 26 & 27 Vict. c. 1.

Prince of Wales' Island, Singapore and **Malacca.** As to their Courts of Judicature, see 18 & 19 Vict. c. 93.

Princes of the Royal Blood, the younger sons and daughters of the Sovereign, and other branches of the royal family who are not in the immediate line of succession.

Princess Royal, the eldest daughter of the Sovereign.—3 *Steph. Com.*

Principal, a head, a chief; also, a capital sum of money placed out at interest; also, an heir-loom, mortuary, or corse-present.

Principal and Accessary (or **Accessory**). (1) *Principals* in offences are of two degrees: (*a*) of the first degree, i.e., the actual perpetrators of the crime; (*b*) of the second degree, i.e., those who are present, aiding and abetting the act to be done.

Accessores are not the chief actors in the offence, nor present at its performance, but are in some way concerned therein, either before or after the fact is committed. See ACCESSORY; and 4 *Steph. Com.*

Principal and Agent, he who being *sui generis* and competent to do any act for his own benefit on his own account, employs another person to do it, is called the principal constituent, or employer, and he who is thus employed is called the agent, attorney, proxy, or delegate of the principal, constituent, or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority. And the act, when performed, is often designated as an act of agency or procuration.—*Story on Agency*, 2. See AGENT; and consult *Evans on Principal and Agent.*

Principal challenge, a species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. See CHALLENGE.

Principal and surety. See GUARANTY.

Principia probant, non probantur. 3 Co. 40. — (Principals prove, they are not proved.)

Principiis obsta.—(Oppose beginnings.)

Principium est potissima pars cujusque rei 10 Co. 49.—(The principle of anything is its most powerful part.)

Print works are regulated by the Consolidating Factory and Workshop Act, 1878, replacing 8 & 9 Vict. c. 29, and 30 & 31 Vict. c. 103.

Printers. Every person who shall print anything which is meant to be published or dispersed, and shall not print upon the front or the first or last leaf, in legible characters, his name and usual place of abode or business, or who shall take any part in publishing or dispersing any printed matter without such name and address, shall forfeit for each copy

a sum not more than five pounds (2 & 3 Vict. c. 12, s. 2; and 32 & 33 Vict. c. 24, s. 1). To this, too, there are many exceptions. See 32 & 33 Vict. c. 24, and enactments contained in the second schedule thereto.

As to compelling a discovery of the printer, publisher, or proprietor of any newspaper, see 6 & 7 Wm. IV. c. 76, s. 19; and *Dixon* v. *Enoch*, *L. R.* 13 *Eq.* 394.

Printing. By R. S. C. 1883, Ord. XIX., r. 9, every pleading which shall contain less than ten folios of seventy-two words each (every figure being as one word), may be either printed or written, or partly printed and partly written, and every other pleading not being a petition or summons, must be printed. An affidavit in answer to interrogatories, must, if over ten folios, be printed, unless a judge order otherwise (Ord. XXXI., r. 9). A special case must be printed (Ord. XXXIV., r. 3). All affidavits, to be used in a case in which the evidence is by consent to be taken by affidavits, must be printed (Ord. XXXVIII., r. 30). And any evidence, not printed below, may be ordered to be printed for the Court of Appeal (Ord. LVIII., r. 12). By Ord. LXVI., r. 3, printing, when required, must be on cream wove paper, etc., in pica type, leaded, etc.

Printing is included in 'writing' (see that title) in an Act of Parliament.

Prior, chief of a convent, next in dignity to an abbot.

Prior tempore potior jure.—(He who is first in time is preferred in law.)

Priority, an antiquity of tenure in comparison with another less ancient; also that which is before another in order of time.—*Cowel.*

As to priority among creditors, see 32 & 33 Vict. c. 46, which provides that in the administration of the estate of any person who shall die on or after January 1st, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt. See also PREFERENTIAL PAYMENTS.

Prisage, or **Butlerage,** a custom whereby the prince challenges out of every bark laden with wine, two tuns of wine, at his own price. Abolished by 51 Geo. III. c. 15; also, that share, usually a tenth part, which belongs to the sovereign or admiral out of such merchandises as are taken at sea, by way of lawful prize.—2 *Steph. Com.*, and 1 *Br. & Had. Com.* 375.

Priso, a prisoner taken in war.

Prison, a place of confinement for the safe custody of persons; a gaol.—3 *Steph. Com.*

The erection, maintenance, and regulation of prisons are provided for by several Acts of Parliament, for which see *Chitty's Statutes*, vol. v., tit. '*Prison.*'

The Prison Act, 1877, 40 & 41 Vict. c. 21, transferred the management of prisons from counties and boroughs to the government, and put an end to the obligation theretofore existing on the part of the counties and boroughs to maintain prisons of their own.

The Acts as to Convict Prisons abroad are consolidated by 22 Vict. c. 25.

Prisonam frangentibus, Statute de, 1 Edw. II. st. 2 (in the Revised Statutes, 23 Edw. I.), a still unrepealed statute, whereby it is felony for a felon to break prison, but misdemeanour only for a misdemeanant to do so. —1 *Hale P. C.* 612.

Prisoner, one who is being tried for felony; one who is confined in a prison.

Private Acts of Parliament, acts operating upon particular persons and private concerns. See ACT OF PARLIAMENT.

Private Bill Office, an office of Parliament where the business of obtaining private acts of parliament is conducted.

Private Chapels Act, 1871, 34 & 35 Vict. c. 66.

Privateers. See LETTERS OF MARQUE.

Privation [an abbreviation, by aphæresis, of the word *deprivation*], a taking away or withdrawing.—*Co. Litt.* 239.

Privatio præsupponit habitum. 2 Rol. Rep. 419.—(A deprivation presupposes a possession.)

Privatis pactionibus non dubium est non lædi jus cæterorum. D. 2, 15, 3.—(There is no doubt that the rights of third persons are not prejudiced by private agreements.)

Privatorum conventio juri publico non derogat. 9 Rep. 141, D. 50, 17, 45, s. 1.—(The agreement of private individuals does not derogate from the public right (law).)

Privatum commodum publico cedit. Jenk. Cent. 223.—(Private good yields to public.)

Privatum incommodum publico bono pensatur. Jenk. Cent. 85.—(Private loss is compensated by public good.)

Privement ensient, pregnancy in its earlier stages.—*Wood's Inst.* 662.

Privies, those who are partakers or have an interest in any action or thing, or any relation to another. They are of six kinds:—

(1) Privies of blood, such as the heir to his ancestor.

(2) Privies in representation, as executors or administrators to their deceased testator or intestate.

(3) Privies in estate, as grantor and grantee, lessor and lessee, assignor and assignee, etc.

(4) Privities, in respect of contract, are personal privities, and extend only to the persons of the lessor and lessee.

(5) Privies, in respect of estate and contract, as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee.

(6) Privies in law, as the lord by escheat, a tenant by the courtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, etc.

Privilege, an exemption from some duty, burthen, or attendance, to which certain persons are entitled, from a supposition of law, that the stations they fill or the offices they are engaged in, are such as require all their care; and that, therefore, without this indulgence, it would be impracticable to execute such offices so advantageously as the public good requires.

The separate privileges of either House of Parliament are extensive, but they are at the same time uncertain and indefinite. Amongst those privileges are, the power of committing persons to prison; the power of publishing matters which, if not issuing from such high authority, might become the subject of proceedings in a court of law; the power of directing the Attorney-General to prosecute persons accused of offences against the law or affecting the privilege of parliament; and finally, a power vested in each House respectively of doing anything not directly contravening an act of parliament which may be necessary for the vindication or protection of itself in the exercise of its own constitutional functions. In the daily proceedings of parliament, questions of privilege take precedence of all other business.

The privileges of individual members of parliament are, freedom of speech and person, including freedom from arrest and seizures, under process from the courts of justice; this, however, does not extend to indictable offences, to actual contempts of the courts of justice, or to proceedings in bankruptcy. Members of parliament are exempt from serving the office of sheriff, from obeying *subpœnas*, and serving on juries. 'Privilege of Parliament' continues to peers at all times, and to commoners for a 'convenient' time after prorogation and dissolution. Peers are exempt from attending courts-leet or the *posse comitatus*; when arraigned for any criminal offence it must be before their peers who return a verdict, not upon oath, but upon honour; they have the privilege of sitting covered in courts of justice.

Barristers are privileged from arrest *eundo, morando et redeundo*, going to, coming from, and abiding in court—this includes judge's chambers: so clergymen as to divine service.

Privilege, Writ of, a process to enforce or maintain a privilege.—*Cowel.*

Privileged communication, a communication which a witness cannot be compelled to divulge, such as that which takes place between husband and wife (see 16 & 17 Vict. c. 83, s. 3), between a client and his legal adviser, and which cannot be disclosed without the client's consent; secrets of states, etc. See also CONFESSION. Also a communication which cannot be made the ground of an action for defamation, such as that which is made truthfully and *bonâ fide* by a master respecting the character of a servant to a person intending to employ him. See LIBEL.

Privileged copyholds, customary copyholds, which see.

Privileged debts, debts which an executor may pay in preference to all others, such as funeral expenses, etc. And see PREFERENTIAL PAYMENTS.

Privileged villenage, villein socage, which see.—1 *Steph. Com.*

Privilegia, or **Laws ex post facto**, laws which are enacted after an act is committed, declaring it for the first time to have been a crime, and inflicting a punishment upon the person who has committed it.

Of such laws the great Roman orator thus speaks:—*Vetant leges sacratæ, vetant duodecim tabulæ, leges privatis hominibus irrogari; id enim est privilegium. Nemo unquam tulit, nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit.*—Cicero Pro Domo, 17.

Privilegia quæ re verâ sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessiones: sed prætextu liciti non debet admitti illicitum. 11 Co. 88.—(Privileges which are truly in prejudice of public good, have, however, a more specious front and pretext of public good, than good and legal grants: but under pretext of legality, that which is illegal ought not to be admitted.)

Privilegium clericale, the benefit of clergy, which is abolished by 7 & 8 Geo. IV. c. 23.—See BENEFIT OF CLERGY.

Privilegium, property propter, a qualified property in animals *feræ naturæ*, i.e., a privilege of hunting, taking, and killing them, in exclusion of others.—2 *Bl. Com.* 394; 2 *Steph. Com.*

Privilegium est beneficium personale, et extinguitur cum personâ. 3 Buls. 8.—(A privilege is a personal benefit, and dies with the person.)

Privilegium est quasi privata lex. 2 Buls.

189.—(Privilege is, as it were, a private law.)

Privilegium non valet contra rempublicam. Bac. Max. 25.—(A privilege avails not against public good.)

Privity, participation in interest or knowledge. See PRIVIES.

Privy [fr. *privé*, Fr.], having a participation in interest or knowledge. See PRIVIES.

Privy Council, a great council of state held by the Sovereign with her councillors, to concert matters for the public service, and for the honour and safety of the realm.

The Sovereign nominates privy councillors, and no patent or grant is necessary. The number of the council is indefinite, and is dependent upon the royal will. It is summoned on a warning of forty-four hours, and never held without the presence of a secretary of state; the junior delivers his opinion first, and the Sovereign, if present, last; it is dissolved six months after the demise of the crown, unless sooner determined by the successor. As to deputy-clerk of the council, see 22 & 23 Vict. c. 1. Consult 1 *Br. & Had. Com.* 271—7; 2 *Steph. Com.* See also JUDICIAL COMMITTEE.

Privy Councillors, the Sovereign's advisers. They are made by the royal nomination, without either patent or grant; and on taking the necessary oaths, they become immediately privy councillors during the life of the Sovereign who chooses them, but subject to removal at the royal discretion.

Their duties are: (1) To advise the Sovereign according to the best of their cunning and discretion. (2) To advise for the Sovereign's honour and good of the public; without partiality through affection, love, need, doubt, or dread. (3) To keep the Sovereign's counsel secret. (4) To avoid corruption. (5) To help and strengthen the execution of what shall be resolved. (6) To withstand all persons who would attempt the contrary. (7) To observe, keep, and do all that a true and good councillor ought to do to his Sovereign.—2 *Steph. Com.*; and 1 *Br. & Had. Com.* 271—7.

Privy Purse, the income set apart for the Sovereign's personal use. See CIVIL LIST.

Privy Seal and **Privy Signet**. The Privy Seal (*privatum sigillum*) is a seal of the Sovereign under which charters, pardons, etc., signed by the Sovereign, pass before they come to the Great Seal, and also used for some documents of less consequence which do not pass the Great Seal at all, such as discharges of recognisances, debts, etc. The Privy Signet is one of the Sovereign's seals, used in sealing his private letters, and all such grants as pass his hand by bill signed, which seal is always in the custody of the king's secretaries. There were formerly four clerks of the Signet Office, but by 14 & 15 Vict. c. 82, s. 3, the offices of the clerks of the signet and of the privy seal are abolished. The practice as to the passing of letters under these seals was altered and simplified by the same statute. See *Steph. Com.*, 7th ed., i. 619; ii. 458; iv. 143. See GREAT SEAL and LORD PRIVY SEAL. As to forgery of the Privy Seal and Privy Signet, see FORGERY.

Privy tithes, small tithes.

Prize Commission. See ADMIRALTY COURT.

Prize of War, property captured in war, which falls to the forces capturing it by grace of the Crown, to which it belongs. See 2 Wm. IV. c. 53. See BOOTY OF WAR, and next article.

Prize Court. This is an international tribunal, existing only by virtue of a special commission under the Great Seal, during war or until the litigations incident to war have been brought to a conclusion. It is frequently confounded with the Court of Admiralty, in consequence, perhaps, of the same judge having usually presided in both courts; but this is a mistake, for the whole system of litigation and jurisprudence in the prize court, though exceedingly important, is peculiar to itself, and is governed by rules not applying to the instance court of the Admiralty (now part of the High Court), which is a mere civil tribunal.

In this court are directly decided, not only questions relating to captures, prize, and booty (being prize on shore), but also questions upon the law of nations; though sometimes the latter, and even the construction of treaties, are collaterally argued and determined in other courts. There is an appeal from this court to the Queen in Council. See 27 & 28 Vict. cc. 24 & 25; and *Steph. Com.*, 7th ed., ii. 18; iii. 343; 3 *Br. & Had. Com.* 435.

Prizefighting. Public prizefighting is an affray and an indictable misdemeanour on the part of both combatants and backers (see *Reg.* v. *Coney*, 8 *Q. B. D.* 534, in which it was held that the *mere presence* of persons at a prizefight was not enough to sustain a conviction for assault), and railway companies providing trains for any prizefights are liable to heavy penalties under 31 & 32 Vict. c. 119, s. 21. If death ensue, the surviving combatant is guilty of manslaughter.

Pro [*for*, or *in respect of*], in the grant of an annuity, *pro consilio*, showing the cause of a grant amounts to a condition; but in a feoffment or lease for life, etc., it is the consideration, and does not amount to the condition; for the state of the land by the

feoffment is executed, and the grant of the annuity is executory.—*Plowd.* 412.

Proamita, a great paternal aunt, the sister of one's grandfather.

Proamita magna, a great great-aunt.

Proavia, a great-grandmother.

Proavunculus, a great-uncle.

Proavus, a great-grandfather.

Probandi necessitas incumbit illi qui agit. —(The necessity of proving lies upon him who commences proceedings.)

Probate, official proof of a will. This is obtained by the executor in the Probate branch of the High Court of Justice, and is either *in common form*, where the will is undisputed and quite regular, or *per testes*, in solemn form of law, where it is disputed or irregular. When the will is so proved, the original must be deposited in the registry of the court, and a copy thereof on parchment is made out under its seal, and delivered to the executors, together with a certificate of its having been proved, all which together is usually styled the *probate*, and a probate office copy is evidence of the will in actions concerning real estate by 20 & 21 Vict. c. 77, s. 64.

Probate, Court of, a tribunal established by 20 & 21 Vict. c. 77, amended by 21 & 22 Vict. c. 95, and other later acts, to which the jurisdiction of the ecclesiastical courts in testamentary matters was transferred; it was merged in the Supreme Court by the Jud. Act, by which its jurisdiction was assigned to a 'Probate, Divorce, and Admiralty Division.' As to a site for the court and offices, see 22 & 23 Vict. c. 16. See WILLS.

Probate Duty, a tax upon the gross value of the personal property of the deceased testator. For amount of the duty from 1815 to 1880, see schedule to 55 Geo. III. c. 184. In 1880 a new scale of duties was imposed by 43 Vict. c. 14, s. 9, and in 1881 a further new and increased scale by 44 Vict. c. 12. By 55 Geo. III. c. 184, s. 37, a penalty of 100*l.* and 10 per cent. additional duty is payable by a person acting as executor and not obtaining probate within six months.

Probation, proof, evidence, testimony.

Probationer, one who is upon trial.

Probationes debent esse evidentes, scil. perspicuæ et faciles intelligi. Co. Litt. 283.—(Proofs ought to be evident, *to wit*, perspicuous and easily understood.)

Probator, an examiner; an accuser or approver, or one who undertakes to prove a crime charged upon another. See 4 *Steph. Com.*

Probatory term, a term for taking testimony.

Probatum est (*it is tried or proved*).

Probi et legales homines [Lat.] (*good and lawful men*).

Proc., short for Procuration, which see.

Procedendo, a writ which issued out of the Common Law jurisdiction of the Court of Chancery, when judges of any subordinate court delayed the parties, for that they would not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad judicium* was awarded, commanding the inferior Court in the Queen's name to proceed to give judgment, but without specifying any particular judgment; for that, if erroneous, might be set aside by proceedings in error, or by writ of false judgment; and upon further neglect or refusal, the judges of the inferior court might be punished for their contempt by writ of attachment, returnable in the courts at Westminster. It also lay where an action had been removed from an inferior to a superior court by *habeas corpus, certiorari*, or any like writ, and it appeared to the superior court that it was removed on insufficient grounds. A suit once so remanded could not afterwards be removed before judgment in any court whatever.—21 *Jac. I.* c. 23. See *Br. & Had. Com.*, i. 424, iii. 154. The Common Law, as well as equity jurisdiction of the Court of Chancery, is now transferred to the High Court (Jud. Act, 1873, s. 16).

Procedendo on aid Prayer. If one pray in aid of the Crown in real action, and aid be granted, it shall be awarded that he sue to the Sovereign in Chancery, and the justices in the Common Pleas shall stay until this writ of *procedendo de loquelâ* come to them. So also on a personal action.—*N. N. B.* 154.

Procedure, the mode in which the successive steps in litigation are taken. The procedure of the Common Law courts was regulated by the C. L. P. Acts of 1852, 1854, and 1860; as to which see *Day's C. L. P. Acts.* As to the procedure in equity, consult *Daniell's Chancery Practice*; and *Morgan's Chancery Acts and Orders.* The procedure in actions in the High Court of Justice and the Court of Appeal is now governed for the most part by the Rules of the Supreme Court, based on the rules in the schedule to the Judicature Act, 1875; but where no other provision is made by the Acts or those rules the former procedure remains in force. See PRACTICE.

Proceeds, the sum, amount, or value of goods, etc., sold, or converted into money.

Proceres, chief magistrates. *Dom. Proc.*, *Domus Procerum*; House of Lords.

Procès verbal [Fr.], an authentic minute of an official act, or statement of acts.

Process. It is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning

to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof, by which the rest is directed.—*Brit.* 138.

At *Common Law* the superior courts at Westminster, in personal actions, differed greatly, before the Uniformity of Process Act, in their modes of process, and even the same court admitted a considerable variety of methods, according to the circumstances of the case.

The ordinary process in *Chancery* suits, was service of a copy of the bill or claim, with an endorsed citation, which required the defendant to appear on a certain day. In the case of privilege of peerage, a letter-missive, requesting the defendant to appear, was first obtained and served, and on his default, a copy of the bill was served in the ordinary way.

The process now for the commencement of all actions is the same in all the Divisions of the High Court of Justice, and is called a writ of summons. See SUMMONS.

The mode of commencing an *ecclesiastical suit*, and bringing the parties before the court, is, by process, called a *citation* or summons, containing the name of the judge, the plaintiff and defendant, the cause of complaint, and the time and place of appearance. This citation, in ordinary cases, is obtained, as a matter of course, from the registry of the court, and under its seal; but in special cases the facts are alleged in what is called an *act of court*, and upon those facts the judge or his surrogate decrees the party to be cited; to which, in certain cases, is added an *intimation*; and if the party do not appear, or appearing, do not show cause to the contrary, the prayer of the plaintiff set forth in the decree will be granted.

Suits in the Court for Divorce and Matrimonial Causes, are commenced by citation. (See Jud. Act, 1875, Ord. LXII.)

In *criminal* causes, if the offender be not in custody before indictment, the process for treason, felony, or misdemeanour is *capias* to bring him before the court. But in misdemeanours it is also the practice, upon an indictment found during the sessions or assizes, to issue a *bench-warrant*, signed by a judge or two justices of the peace, to apprehend the offender.

Processum continuando, a writ for the continuance of process after the death of the chief justice or other justices in the commission of *oyer* and *terminer*.—*Reg. Orig.* 128.

Prochein amy [*proximus amicus*, Lat.], the next friend or next of kin to a child in his nonage, who in that respect is allowed to deal for the infant in the management of his affairs; as to be his guardian if he hold land in socage, and in the redress of any wrong done to him. See NEXT FRIEND.

Prochein avoidance, a dower to appoint a minister to a church when it shall next become void.

Prochronism [fr. πρόχρονος, Gk., anterior], an error in chronology; dating a thing before it happened.

Proclaim. See PROCLAMATION.

Proclamation, publication by authority; a notice public. As to royal proclamations, see 1 Edw. VI. c. 12. Proclamation is used particularly in the beginning or calling of a court, and at the discharge or adjourning thereof, for the attendance of persons and dispatch of business.

Proclamation, Fine with. To render a fine more universally public and less liable to be levied by fraud or covin, it was directed by 4 Hen. VII. c. 24 (in confirmation of a previous statute), that a fine after engrossing should be openly and solemnly read and proclaimed in court (during which all pleas should cease) sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by 31 Eliz. c. 2, and these proclamations were endorsed on the record. Abolished by 3 & 4 Wm. IV. c. 74. The 4 Hen. VII. c. 24, was entirely repealed by the 26 & 27 Vict. c. 125.

Proclamator, an officer of the Court of Common Pleas.

Pro confesso. See CONFESSO, BILL TAKEN PRO.

Proconsules, justices in eyre.—*Cowel.*

Proctor [fr. *procurator*, Lat.], a manager of another person's affairs; also a functionary having disciplinary power in our Universities.

Proctors in the Ecclesiastical and Admiralty Courts formerly discharged duties similar to those of solicitors and attorneys in other courts, as and being a separate body of practitioners. The title still survives, but the separation no longer exists. From the jurisdiction of the ecclesiastical courts in causes matrimonial and testamentary having been abolished, the 20 & 21 Vict. c. 77, ss. 43, 105, 106, and c. 85, s. 69, awarded compensation to the proctors, and admitted them to practise, not only in the Probate and Divorce Courts, but also in the Courts of Equity and Common Law. See 21 & 22 Vict. c. 95, s. 9, and c. 108, s. 13; and see also 23 & 24 Vict. c. 27. The Solicitors Act, 1877, 40 & 41 Vict. c. 25, s. 17, replacing the repealed s. 20 of the Solicitors Act, 1870, 33 & 34 Vict. c. 28, allows solicitors to practise as proctors; the 87th section of the Judicature Act, 1878

gives them the title of 'Solicitors of the Supreme Court'; and the Legal Practitioners Act, 1876, 39 & 40 Vict. c. 66, allows solicitors to appear as proctors in the provincial courts of Canterbury and York.

Proctors of the clergy, they who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common clergy of every diocese, to sit in the convocation-house in the time of parliament.

Procuration, an agency, the administration of the business of another; also money which parish priests pay yearly to the bishop or archdeacon, *ratione visitationis*; these are also called *proxies*, and it is said that there are three sorts—*ratione visitationis, consuetudinis, et pacti.*—*Hardr.* 180.

Bills of exchange may be drawn, accepted, or endorsed by procuration, i.e., by an agent who has an authority for such a purpose, and 'a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.' —*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 25. The words 'per proc.' (by procuration) usually follow the signature of an agent, and by s. 26 of the Bills of Exchange Act, a person signing a bill and adding words indicating that he signs in a representative capacity is not personally liable on the bill.

Procuration fee, a sum of money or commission taken by scriveners on effecting loans of money.

A solicitor for a mortgagee may take any amount of procuration money on a loan by way of mortgage, the 12 Anne, st. 2, c. 16, s. 2, limiting it to 5*s.* in the pound, being abolished by 17 & 18 Vict. c. 90.

Procuration of women, the providing of women for the purposes of illicit intercourse. If the woman be under twenty-one and not a common prostitute, the offence is a misdemeanour punishable by imprisonment for not more than two years under the Criminal Law Amendment Act, 1885. Conspiring to procure is a misdemeanour at common law. See *Reg.* v. *Mears*, 20 *L. J. M. C.* 59.

Procuratio est exhibitio sumptuum necessariorum facta prælatis, qui diœceses peragrando, ecclesias subjectas visitant. Dav. 1.—(Procuration is the providing necessaries for the bishops, who, in travelling through their dioceses, visit the churches subject to them.)

Procurationem adversus nulla est præscriptio. Dav. 6.—(There is no prescription against procuration.)

Procurator, one who has a charge committed to him by any person; an agent.

Procurator Fiscal, the public prosecutor in Scotland, who institutes the preliminary inquiry into crime within his district, and also takes the place of the coroner in England, there being no coroner in Scotland. See *Bell's Scotch Law Dict.*

Procuratores ecclesiæ parochialis, churchwardens.—*Paroch. Antiq.* 562.

Procuratorium, the instrument by which any person or community constituted or delegated their proctor to represent them in any court or cause.

Procuratory of resignation, a proceeding in the law of Scotland, by which a vassal authorises the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the fee to a new vassal or to the former vassal and a new series of heirs, which is termed a resignation *in favorem.* It is somewhat analogous to the surrender of copyholds in England. See *Bell's Scotch Law Dict.*

Prodes homines, the barons of the realm.

Prodition, treason, treachery.

Proditor, a traitor. Obsolete.

Proditorie (*treasonably*).

Producent, the party calling a witness under the old system of the Ecclesiastical Courts.

Pro eo quo (*for this that*).

Pro falso clamore suo, a nominal amercement of a plaintiff for *his false claim*, which used to be inserted in a judgment for the defendant. Obsolete.

Profaneness. See BLASPHEMY.

Profane Swearing. See SWEARING.

Profer [fr. *proférer*, Fr.], to produce; an offer to endeavour to proceed in an action; also, the time appointed for the accounts of officers in the Exchequer, which was twice a year.—3 & 4 *Wm. IV.* c. 99, s. 2.

Profert in curiâ (*he produces in court*), where either party alleged any deed, he was generally obliged, by a rule of pleading, to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it was alleged. This, in the days of oral pleading, was of course an actual production in court. Since then, it consisted of a formal allegation that he showed the deed in court, it being, in fact, retained in his own custody. See OYER. Abolished by C. L. P. Act, 1852, s. 55.

Profession, calling, vocation, known employment; divinity, physic, and law are called the learned professions.

Profit à Prendre, a right to enter on the land of another, and take therefrom a profit of the soil. See *Gale on Easements*, 6th ed., 1, 8, and consult *Hall on Profits à Prendre.*

Profit and Loss, the gain or loss arising from goods bought or sold, or from carrying on any other business, the former of which, in book-keeping, is placed on the creditor's side, the latter on the debtor's side. *Net Profit* is the gain made by selling goods at a price beyond what they cost the seller, and beyond all costs and charges.

Profits, the advantages which land yields in the shape of rent, issues, or other emoluments; also gains, pecuniary advantage, from whatever source derived.

Profits mesne. See MESNE PROFITS.

Prohibetur ne quis faciat in suo quod nocere possit alieno; et sic utere tuo ut alienum non lædas. 9 Co. 59.—(It is prohibited for any to do that on his own property which may injure another's: and so use your own, that you do not hurt another's.)

Pro formâ, as a matter of form.

Pro hâc vice, for this occasion.

Prohibition, a writ to forbid any court to proceed in any cause there depending, on the suggestion that the cognizance thereof belongs not to such court. It is a remedy provided by the common law against the encroachment of jurisdiction.

This writ issued not only out of the Queen's Bench, but also out of the Courts of Chancery, Exchequer, and Common Pleas, and now issues out of the High Court of Justice, to any inferior court concerning itself with any matter not within its jurisdiction. If either the judge or a party proceed after such prohibition, an attachment may be had against them for contempt, at the discretion of the Court that awarded it; and an action for damages will lie against them, by the party injured.

The proceedings to obtain this writ are the following:—

The party aggrieved in the court below, applies to the superior court, setting forth the nature and cause of his complaint, in being drawn *ad aliud examen*, by a jurisdiction or manner of process disallowed by the laws of the kingdom. This used formerly to be done by filing, as of record, what was called a suggestion, containing a formal statement of the facts; but by 1 Wm. IV. c. 21, it is not necessary to file any suggestion, but application may be made by affidavits by a rule to show cause (see Crown Office Rules, 1886, rr. 81, 82); if the matter alleged be sufficient, the writ issues. Sometimes the point is too doubtful to be decided upon motion, and the party applying is directed to declare in prohibition, setting forth concisely so much of the proceeding in the court below as may be necessary to show the ground of the application; this procedure has been directed since the Jud. Act (see *South-Eastern R. Co.* v. *Railway Commissioners*, 5 *Q. B. D.* 217), but where the prohibition applied for is to a County Court, it is expressly dispensed with by s. 128 of the County Courts Act, 1888. As to the right of a party prohibited to put the plaintiff in prohibition to declare in prohibition, see *Worthington* v. *Jeffries*, *L. R.* 10 *C. P.* 379.

Prohibitio de vasto, directa parti, a judicial writ which used to be addressed to a tenant, prohibiting him from waste, pending suit.—*Reg. Jud.* 21; *Moor*, 917.

Pro indiviso (*as undivided*), the possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as coparceners before partition.

Pro interesse suo, in respect of his interest.

Project, the draft of a proposed treaty or convention.

Pro læsione fidei. See LÆSIONE FIDEI.

Prolem ante matrimonium natam, ita ut post legitimam, lex civilis succedere facit in hæreditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex Anglorum. Fort. c. 39.—(The Civil Law permits the offspring born before marriage (provided such offspring be afterwards legitimised) to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.)

Proles, progeny. See S. P.

Proletarius, a person who had no property to be taxed, but paid a tax only on account of his children.—*Civil Law.*

Prolicide [fr. *proles*, Lat., offspring, and *cædo*, to kill], the destruction of human offspring. It is either fœticide or infanticide, which see.—*Dungl.*

Prolixity, an unnecessary, superfluous, or impertinent statement.

Prolocutor, the foreman; the speaker of a convocation.

Prolocutor of the Convocation House, an officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the Sovereign's writ; at every parliament there are two prolocutors, one of the upper house of convocation, the other of the lower house, the latter of whom is chosen by the lower house, and presented to the bishops of the upper house as their *prolocutor*, that is, the person by whom the lower house of convocation intends to deliver its resolutions to the upper house, and have its own house especially ordered and governed: his office is to cause the clerk to call the names of such as are of that house, when he sees cause, to read all things propounded, gather suffrages, etc.

Prolytæ, students of the Civil Law during the fifth and last year of their studies.

Promatertera, a great maternal aunt; the sister of one's grandmother.

Promatertera magna, a great-great aunt.

Promise, an engagement for the performance or non-performance of some particular thing, which may be made either by deed, or without deed, when it is said to be by parol; *promise* is usually applied when the engagement is by parol only, for a promise by deed is technically called a *covenant*. See CONTRACT.

Promisee, one to whom a promise has been made.

Promissor, one who makes a promise.

Promissory note, defined in the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 83, as 'an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.' The person who makes the note is called the maker, and the person to whom it is payable is called the payee: when it is negotiated by the indorsement of the payee, he is called the indorser, and the person to whom the note is transferred is the indorsee. The Bills of Exchange Act, 1882, 'codifies' the law relating to promissory notes, and by s. 89 of that Act all the provisions of the Act (with few exceptions) which relate to bills of exchange relate also to promissory notes. See BILLS OF EXCHANGE.

Promissory oaths. See OATHS.

Promoter, a term anciently sometimes applied to a common informer generally (see 5 *Inst.* 191), but in modern times applied only to the prosecutor of an ecclesiastical suit, as in *Combe* v. *Edwards*, 3 *P. D.* 103.

Those who obtain, or take the necessary steps for obtaining, the passing of a private Act of Parliament, or the incorporation of a Joint Stock Company under the Companies Acts, are called the promoters.

Promulgation, publication; open exhibition.

Promutuum, a quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, delivered to him through mistake, contracts the obligation of restoring as much.

It resembles the contract of *mutuum*. (1) That in both a sum of money or some fungible things are required. (2) That in both there must be a transfer of the property in the thing. (3) That in both there must be returned the same amount or quantity of the thing received.—*Civ. Law.*

Pronepos, a great-grandson.

Pronotary, first notary. See PROTHONOTARIES.

Pronurus, the wife of a great-grandson.

Proof, evidence, testimony, convincing token, means of conviction.

Bracton says, there is *probatio duplex*, by witnesses, *vivâ voce*, and *probatio mortua* by deeds, writings, etc. See EVIDENCE.

Pro partibus liberandis, an ancient writ for partition of lands between co-heirs.—*Reg. Orig.* 316.

Propatruus magnus, a great-great uncle.

Proper feuds, the original and genuine feuds held by pure military service.

Property, the highest right a man can have to anything, being used for that right which one has to lands or tenements, goods or chattels, which does not depend on another's courtesy.

Property is of three sorts: absolute, qualified, and possessory.

Property in realty is acquired by entry, conveyance, descent, or devise; and in personalty, by many ways, but most usually by gift, bequest, or bargain and sale.

Consult *Williams on Real Property; Williams on Personal Property.*

Property qualification, for members of Parliament, abolished by 21 & 22 Vict. c. 26; for members of municipal corporations and local governing bodies by 43 Vict. c. 17.

Property-tax. An annual tax, called also 'Income Tax,' on the income (unless such income fall below 150*l.*) of every man. The *incidence* of the tax (the *amount* of which is fixed by an annual statute termed of late years the 'Customs and Inland Revenue Act') is regulated chiefly by 5 & 6 Vict. c. 35, and 16 & 17 Vict. c. 34. The rules for charging property in respect of ownership and occupation are to be found in schedules A. and B. of 5 & 6 Vict. c. 35; for charging dividends, in schedule C.; for charging professional and trade profits in schedule D.; and for charging salaries in schedule E. See *Chit. Stat.*, vol. v., tit. '*Property Tax.*'

Prophecies. See FALSE PROPHECIES.

Propinqui et consanguinei, the nearest of kin to a deceased person.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. Co. Litt. 10.—(He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is remoter.)

Propinquity, kindred, parentage.

Proponent, the propounder of a thing.—*Eccl. Law.*

Proportum, intent or meaning.—*Cowel.*

Proposal, a statement in writing of some special matter submitted to a chief clerk in the Court of Chancery, pursuant to an order made upon an application *ex parte*, or a

decretal order of the Court. It is either for maintenance of an infant, appointment of a guardian, placing a ward of the court at the university, or in the army, or apprentice to a trade; for the appointment of a receiver, the establishment of a charity, etc.

Propositio indefinita æquipollet universali.—(An indefinite proposition is equivalent to a general one.)

Proposition, a single logical sentence.

Propositus, the person proposed; the person from whom a descent is traced.

Propound, to produce (e.g., a will or model) as authentic.

Proprietary, he who has a property in anything.

Proprietary chapels, those belonging to private persons who have purchased or erected them with a view to profit or otherwise. See 34 & 35 Vict. c. 66.

Proprietas verborum est salus proprietatum. Jenk. Cent. 16.—(Propriety of words is the salvation of property.)

Proprietate probandâ, de, a writ addressed to a sheriff to try by an inquest in whom certain property, previous to distress, subsisted.—*Finch. L.* 316.

Proprietates verborum observandæ sunt. Jenk. Cent. 136.—(The proprieties of words are to be observed.)

Proprio vigore [Lat.] (*by its own force*).

Pro querente [abbrev. *pro quer.*] (*for the plaintiff*).

Pro ratâ, or **Pro ratâ parte** (*in proportion*).

Pro re natâ, to meet the emergency.

Prorogated jurisdiction, a power conferred by consent of the parties upon a judge who would not otherwise have jurisdiction.—*Bell's Scotch Law Dict.*

Prorogation, prolonging or putting off to another day.

A prorogation is the continuance of the Parliament from one session to another, as an adjournment is a continuation of the session from day to day.

Prorogation never extends beyond eighty days, but fresh prorogations may take place from time to time by proclamation. See also 30 & 31 Vict. c. 81, and title PARLIAMENT.

Pro salute animæ [for the good of his soul]. All prosecutions in the ecclesiastical courts are *pro salute animæ.*

Prosecution, a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions, the Queen is nominally the prosecutor. See titles PUBLIC PROSECUTOR and ADVOCATE, LORD.

Prostitute. A woman who indiscriminately consorts with men for hire. Solicitation by prostitutes is punishable in towns by 10 & 11 Vict. c. 89, s. 28; in the metropolis by 2 & 3 Vict. c. 47, s. 54, and generally by 5 Geo. IV. c. 83.

As to the repealed 'Contagious Diseases Acts,' see that title.

Protectio trahit subjectionem, et subjectio protectionem. Co. Litt. 65 a.—(Protection begets subjection, subjection protection.)

Protection, defence, shelter from evil, especially from being arrested; also, an immunity granted by the Crown to a person to be free from lawsuits for a certain time, and for some reasonable cause. It is a branch of the royal prerogative, now very rarely resorted to. Also the giving of advantages in respect of duties to home over foreign commodities. Consult *Mill's Pol. Econ.*

Protection of Property. See the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86.

Protection Order. A wife deserted by her husband, may obtain from the magistrate or the Court for Divorce an order to protect property acquired and to be acquired by her since desertion, as if she were a *feme sole*; after the order is granted, she sues and is sued as a *feme sole.* The husband may apply to the magistrate who made the order, or his successor, for the discharge thereof.—20 & 21 *Vict.* c. 85, s. 51; 27 & 28 *Vict.* c. 44; 28 & 29 *Vict.* c. 43 (Ireland). See also MARRIED WOMAN'S PROPERTY.

Protectionibus, de, the statute 33 Edw. I. stat. 1, allowing a challenge to be entered against a protection, etc.

Protectorate, the period during which Oliver Cromwell ruled in this country; (2) also the office of protector; (3) the relation of the English Sovereign, till the year 1864, to the Ionian Islands.

Protector of the Settlement, the person appointed by the Fines and Recoveries Act, 3 & 4 Wm. IV. c. 74, in substitution for the old tenant to the *præcipe*, whose concurrence in barring estates-tail in remainder is required in order to preserve, under certain modifications, the control of the tenant for life over the remainder-man.

The protector is thus defined:—'If, at the time when there shall be a tenant-in-tail of lands under a settlement, there shall be subsisting in the same lands, or any of them under the *same* settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (*not being an estate for years*), prior to the estate-tail, then the owner of the prior estate, or the first of such prior estates (if more than one) then subsisting under the same settlement, or who would have been so if no absolute disposition thereof

had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the prior estate), shall be the *protector of the settlement*, so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this Act be deemed the owner of such prior estate, *although* the same may have been charged or incumbered by the owner or the settlor, or otherwise; and *although* the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances of such prior estate, and *although* such prior estate may have been absolutely disposed of by the owner, or by or through the bankruptcy or insolvency or other default of such owner' (3 & 4 Wm. IV. c. 74). It is to be observed, that his prior estate must continue to subsist, for if it be merged, surrendered, or determined by forfeiture, it is presumed that he would cease to be the protector. The section then goes on to enact, 'that *an estate by the courtesy*, in respect to the estate tail, or of any prior estate created by the *same* settlement, shall be deemed prior estate under the same settlement within this clause, and that *an estate by way of resulting use or trust* to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause' (s. 22).

Protest, a solemn declaration of opinion, generally of dissent. Each peer has a right, when he disapproves of the vote of the majority of the House of Lords, to enter his dissent on the journals of the House, with his reasons for such dissent, which is usually styled his protest.

Also, a notification written by a notary upon a foreign bill of exchange of non-acceptance or non-payment; as to this, see Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 51, by which a foreign bill, dishonoured by non-acceptance or non-payment, must be duly protested, otherwise the drawer and indorsers are discharged. All protests made in England must, by the Stamp Act, 1870 (see s. 116 and schedule), be on a stamp, otherwise they cannot be given in evidence without payment of a penalty.

The following is the form of protest for non-payment:—

'On this day, the first of January, in the year of our Lord, one thousand eight hundred and forty-eight, at the request of A. B., bearer of the original bill of exchange, whereof a true copy is on the other side written, I, Y. Z., of London, notary public, by royal authority duly admitted and sworn, did exhibit the said bill.'

[*Here the presentment is stated, and to whom made, and the reason, if assigned, for non-payment.*]

'Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest as well against the drawer, acceptor, and indorsers of the said bill of exchange, as against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests suffered and to be suffered, for want of payment of the said original bill. Thus done and protested in London aforesaid, in the presence of E. F.'

[*The expenses of noting and protest are then subscribed.*]

Also, a writing attested by a justice of the peace or consul, drawn up by a master of a ship, stating the circumstances under which an injury has happened to the ship, or to the cargo, or other circumstances calculated to affect the liability of the shipowner or the charterer, etc.

Protestando, a word made use of to avoid double pleading in actions; it prevented the party that made it from being concluded by the plea he was about to make, that issue could not be joined upon it; and it was also a form of pleading, where one would not directly affirm or deny anything alleged by another or himself. It was formerly abolished by rule of court, 4 Wm. IV., whereby it was rendered unnecessary.—*Chit. Pl.* 646.

As to protestation in equity pleadings, see *Story's Eq. Pleadings*, 669; and consult *Daniell's Chancery Practice*.

Protestants, those who adhered to the doctrine of Luther; so called, because, in 1529, they protested against a decree of the Emperor Charles V. and of the Diet of Spires, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome.—*Encyc. Lond.*

Protestation. See PROTESTANDO.

Prothonotaries, officers in the Courts of Common Pleas and Exchequer, who were superseded by the masters.—7 *Wm. IV.* and 1 *Vict.* c. 30; 1 *Steph. Com.* They were, however, continued in the Courts of Common Pleas at Durham and Lancaster. See now DISTRICT REGISTRARS.

Protocol [fr. πρῶτος, Gk.; and κόλλη], the original copy of any writing.

An original is styled the *protocol* or *scriptura matrix*.—*Encyc. Lond.*

The term is usually applied to writings of a diplomatic character.

Protutor, a *quasi* tutor.—*Civil Law.*

Prout patet per recordum (*even as it appears by the record*). The omission of the

words '*per recordum*' is but form, and so it was twice adjudged, viz., in *Hancocke* v. *Prowd*, and *Clegat* v. *Banbury*, 2 *Sid.* 16; 1 *Saund.* 337 *b. n.* (4). Rendered unnecessary by 14 & 15 Vict. c. 100, s. 24.

Prover, an approver (*q.v.*).

Provident and Industrial Societies. See INDUSTRIAL SOCIETIES.

Province, the district over which the jurisdiction of an archbishop extends: England is divided into two provinces, Canterbury and York; the province of York comprises all north of the Humber, i.e., Yorkshire and Lancashire, etc., and Cheshire; all the rest of the island is in the province of Canterbury. A county; an out-lying county governed by a deputy or lieutenant. *Metaphorically*, the sphere of duty: as the province of the judge and the province of the jury.

Provincial constitutions, the decrees of provincial synods held under divers Archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.—*Lynd. Provinciale.*

Provincial courts, the several archiepiscopal courts in the two ecclesiastical provinces of England.

Provinciale, a work on ecclesiastical law, by William Lyndwode, official principal to Archbishop Chichele in the reign of Edward IV. 4 *Reeves*, c. xxv. 117.

Provisional assignees, those who (under a former system of the bankrupt law) were appointed under fiats in bankruptcy in the country to take charge of bankrupts' estates, etc., until the creditors' assignees were appointed.

Provisional committee, a committee appointed for a temporary occasion.

Provisional Order. An order by a Government department authorising a public undertaking, called 'provisional,' because it is of no force unless and until it is confirmed by Act of Parliament. Provisional Orders may, for example, be made by the Local Government Board under the Public Health Act, 1875, for the formation of 'united districts' for the purposes of that Act (s. 279), or similar purposes after public notice given and objections considered in the manner pointed out by s. 297 of the Act, and under the Local Government Act, 1888, for transferring to County Councils any administrative and statutory powers of the Education or other Government department; by the 'confirming authority' for 'improvement schemes' made by a 'local authority' under the Artizans and Labourers Dwellings' Improvement Act, 1875; and by the Board of Trade under the Electric Lighting Act, 1882, and the Railway and Canal Traffic Act, 1888, s. 24, for giving effect to revised classifications of railway rates.

Procedure by provisional order is less expensive than procedure by bill direct.

Provisiones, those Acts of Parliament which were passed to curb the arbitrary power of the Crown.—*Mat. Paris.*

Proviso, stipulation, caution, a condition, inserted in any deed, on the performance whereof the validity of the deed depends. As to the proviso for re-entry in a lease, see FORFEITURE (5).

The terms *proviso* and *condition* are synonymous, and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event. Such qualities annexed to personal contracts and agreements are generally called conditions. A proviso or condition differs from a covenant in this, that the former is in the words of, and binding upon, both parties; whereas the latter is in the words of the grantor only.

Proviso est providere præsentia et futura non præterita. Co. 72.—(A proviso is to provide for the present or future, not the past.)

Proviso, Trial by. Where the plaintiff, after issue joined, did not proceed to trial where he ought to have done so, the defendant might under the old practice have the action tried by proviso; he might give the plaintiff notice of trial, make up the record, carry it down and enter it, and proceed to the trial as if he were proceeding as plaintiff. This could be done only in cases where the plaintiff had been guilty of some *laches* or default after issue joined, except in replevin, prohibition, *quare impedit*, and error in fact; in which case, both parties being plaintiffs, the defendant might make up the record, and thereupon proceed to trial, although no *laches* or default were imputable to the plaintiff. The right to try by proviso was expressly saved by C. L. P. Act, 1852, s. 116, but a defendant seldom tried by proviso, as the better course was to take proceedings under C. L. P. Act, 1852, s. 101.

Provisor, a purveyor; also one who sued to the court of Rome for a provision.—*Cowel.*

Provisors, Statutes against, 25 Edw. III. st. 6; 27 Edw. III. st. 1, c. 3; 38 Edw. III. st. 1, c. 4, and st. 2, cc. 1—4; 26 & 27 Vict. c. 155, all repealed as obsolete by Stat. Law Rev. Act. 1863. See PRÆMUNIRE.

Provost, the principal magistrate of a royal burgh in Scotland; a governing officer of an university or college.

Provost-Marshal, an officer of the royal

navy, who had the charge of prisoners taken at sea, and sometimes also on land.—13 *Car. II.* c. 9.

Proxeneta, a kind of broker or agent.

All contracts and agreements respecting marriage (commonly called marriage-brokage contracts), by which a party engages to give another a compensation, if he will negotiate an advantageous marriage for him, are void, as being injurious to or subversive of the public interest. But the Civil Law does not seem to have held contracts of this sort in such severe rebuke: for it allowed *proxenetæ*, or match-makers, to receive a reward for their services to a limited extent.—1 *Story's Eq. Jurisp.*, s. 260.

Proxies, annual payments by the parochial clergy to the bishop, etc., on visitation.

Proxy, a person appointed usually by written authority, by a person entitled to vote personally, to vote at the discretion of the proxy.

As to voting by proxy under Companies Clauses Consolidation Act, 1845, 8 Vict. c. 16, see ss. 76, 77 of that Act; amended as to case of a company being shareholder by Companies Clauses Acts, 1888 and 1889.

The stamp-duty on a proxy to vote at a meeting of a joint-stock company is reduced to 1*d.* by 34 Vict. c. 4.

Voting by proxy at the meetings of the creditors of a bankrupt is specially restricted by the Bankruptcy Act, 1890, s. 22, and at the meetings of the creditors and contributories of companies being wound up, by s. 6 and sched. 1 of the Companies Winding-up Act, 1890.

Prudenter agit qui præcepto legis obtemperat. 5 Co. 49.—(He acts prudently, who obeys the command of the law.)

Pryk, a kind of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenant, holding land by this tenure, was to find for the king.

Psalter, the table of Psalms. See 34 & 35 Vict. c. 37, amending the law relating to the Tables of Lessons and Psalter contained in the Prayer-book.

Pseudograph, false writing.

Pubertas. See AGE.

Puberty [fr. *pubertas*, Lat.], the age of 14 in men and 12 in women; when they are held fit for and capable of contracting marriage.

Publicans, persons authorised by license to keep a public-house and retail therein, for consumption on or off the premises where sold, all intoxicating liquors. Publicans (who are also termed 'licensed victuallers') are subjected to a number of restrictions by a series of Acts called the 'Licensing Acts.' See INTOXICATING LIQUORS, and as to the duties and the responsibility of innkeepers, see INNKEEPERS.

Publicatio, confiscation.—*Civ. Law.*

Publication, divulgation; proclamation; the word is also applied to the uttering of oral slander. Publication of evidence in Chancery is no longer practised, as all parties attend the examination of witnesses.

The publication of fair reports of legal proceedings in court (other than *ex parte* proceedings) is a Common Law right exempt from proceedings for libel.

The publication of the state of affairs in a Chancery suit, in a newspaper, is often ordered by the Court, as a necessary step in a suit.

Publication of a citation in two newspapers is frequently ordered by the Court for Divorce and the Court of Probate as a step to entering an appearance for a party.

As for the publication of an apology for libel in a newspaper, see LIBEL.

As for publication of banns of marriage, see 4 Geo. IV. c. 76; 6 Geo. IV. c. 92; 11 Geo. IV. and 1 Wm. IV. c. 18; and MARRIAGE.

Publication of a will is no longer necessary by 1 Vict. c. 26, s. 13.

Publicist, a writer on the law of nations.

Public accounts, the accounts of the expenditure of the nation. They are rendered to the Comptroller and Auditor-General under 29 & 30 Vict. c. 39.

Public Act of Parliament. See ACT OF PARLIAMENT.

Public Appointments, Sale of, the sale or transfer of these is generally contrary to the policy of the law, and prohibited in most cases by the express enactment of the legislature (5 & 6 Edw. VI. c. 16; 49 Geo. III. c. 126; 6 Geo. IV. cc. 82, 83). See 3 & 4 Vict. c. 113, s. 42, and 9 & 10 Vict. c. 88, making void (except when under the Augmentation and Church Building Acts) any sale or assignment by any spiritual person of any parsonage held in virtue of his office.

Public baths. See BATHS.

Public carriages and conveyances. See STAGE CARRIAGES, RAILWAYS, and CONVEYANCES BY WATER.

Public chapels are chapels founded at some period later than the church itself; they were designed for the accommodation of such of the parishioners as in course of time had begun to fix their residence at a distance from its site: and chapels so circumstanced were described as *chapels of ease*, because built in aid of the original church.—3 *Steph. Com.*

Public companies. See COMPANIES.

Public elementary school, a school to

which the attendance at any place of religious worship is no condition of admission, at which religious instruction is separate and optional, which is subject to inspection by Government Inspectors in secular subjects, and is so conducted as to receive an annual Parliamentary grant.—*Elementary Education Act*, 1870, 33 & 34 Vict. c. 75, s. 7.

Public Funds. See FUNDS.

Public Health. The first 'Public Health Act,' which was only an 'adoptive Act' (see ADOPTIVE ACT), was passed in 1848 (11 & 12 Vict. c. 63), and was followed in subsequent years down to 1874 by a great variety of other Acts (for a list of them see schedule 5 to the Act of 1875, after mentioned); the whole of which, except so far as they relate to the Metropolis, have now been repealed by the Public Health Act, 1875, which consolidates the law relating to public health, and re-enacts the substance of the repealed Acts. It provides that England, except the Metropolis, shall consist of districts to be called 'urban sanitary districts' and 'rural sanitary districts' (s. 1). The urban authority is: (1) in boroughs subject to the Municipal Corporations Act, the mayor, aldermen, and burgesses acting by the council; (2) in Improvement Act districts, the Improvement Commissioners; and (3) in Local Government Districts, the Local Board (s. 6). In rural districts the Guardians are the sanitary authority (s. 9). The Act contains elaborate provisions with reference to sewers and drains (ss. 13—26), the disposal of sewage (ss. 27—31), the making of sewage works without the district (ss. 32—34), privies, water-closets, etc. (ss. 35—41), scavenging and cleansing (ss. 42—50), water supply (ss. 51—70), cellar-dwellings and lodging-houses (ss. 71—90), the prevention, abatement, etc., of nuisances (ss. 91—111), offensive trades (ss. 112—115), unsound meat, etc. (ss. 116—19), infectious diseases and hospitals, epidemic diseases, mortuaries, etc. (ss. 120—143), highways and streets (ss. 144—160), the lighting of streets by gas or other means of lighting (ss. 161—3), public pleasure grounds and clocks (ss. 164, 165), markets and slaughter houses (ss. 166—70), police regulations (ss. 171, 172), contracts (ss. 173, 174), purchase of land (ss. 175—8), arbitration (ss. 179—81), byelaws (ss. 182—8), officers of local authorities (ss. 189—96), mode of conducting business (ss. 197—206), expenses of urban authorities and urban rates (ss. 207—228), expenses of rural authorities (ss. 229—32), borrowing powers (ss. 233—44), audit of (accounts ss. 245—50), prosecution of offences, recovery of penalties, notices, and appeals (ss. 251—69), alteration of areas and union of districts (ss. 270—86), port sanitary authorities (ss. 287—92), inquiries and provisional orders by the Local Government Board (ss. 293—304), miscellaneous and temporary provisions (ss. 305—325), saving and repealing clauses, etc. (ss. 326—343). In schedules to the Act are contained rules as to meetings and proceedings, rules for the election of Local Boards, and other rules and forms.

The Act does not apply to London. See LONDON.

Consult the works on Public Health of *Glen*, *Lumley*, *Chambers*, or *Fitzgerald*, and see LABOURERS' DWELLINGS, INFECTIOUS DISEASES, and PUBLIC WORKS LOANS ACT, 1875.

Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 45, an 'adoptive Act' except in London. The mode of adoption is by resolution of the local authorities, but only certain sections can be adopted by rural authorities.

There are five points, relating (1) to the mode and publication of the fact of adoption; (2) telegraph, etc., wires; (3) extensions of the Public Health Act of 1875 and other sanitary provisions; (4) music and dancing licenses; and (5) the issue of local loans.

'All or any' of parts 2—5 may be adopted by an urban authority, and certain sections of part 3 by a rural authority; while by s. 5 the Local Government Board may extend any of the provisions of any part to any rural sanitary district.

See further MUSIC AND DANCING, WHIRLIGIGS, and WIRES.

Public-House. See PUBLICANS.

Public-House Closing Act, 1864, 27 & 28 Vict. c. 64, an 'adoptive Act' whereby public-houses and refreshment houses, till then allowed to be open all night, were closed in boroughs and Improvement Act districts between 1 and 4 A.M. The Act, which was amended and partly repealed by the Public-House Closing Act, 1865, is applied to the whole of England by s. 11 of the Licensing Act, 1874, 37 & 38 Vict. c. 49, and the general closing hour for licensed premises is substituted for 1 A.M. See also REFRESHMENT HOUSE.

Public libraries. See LIBRARIES.

Public Meeting, a meeting which any person may attend. Any number of persons may meet in any place for any lawful purpose with the consent of the owner of that place; but without such consent, and even with it in the public streets, which, as was ruled by Mr. Justice Charles in the Trafalgar Square case in 1887 (and see per *Wills and Grantham JJ.* in *ex parte Lewis*, 21 *Q. B. D.* 191), are lawfully used for the purpose of passing and

repassing only, there is no 'right of public meeting' known to English law.

Newspaper reports of public meetings are 'privileged' (see LIBEL) by the Law of Libel Amendment Act, 1888, which defines, *for the purposes of that Act*, a public meeting as 'any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.'

Political meetings within a mile of Westminster Hall during the session of Parliament are specially prohibited by 57 Geo. III. c. 19.

As to public meetings of limited bodies, see MEETING.

Public nuisance. See NUISANCE.

Public officer (abbreviation p.o.), a person appointed by joint-stock banking companies, etc., under 7 Geo. IV. c. 46, s. 9, to sue and be sued on behalf of the company. As to the punishment of frauds committed by such persons, see 24 & 25 Vict. c. 96, ss. 81—84.

Public parks. See PARK, and also 22 Vict. c. 27, and 34 & 35 Vict. c. 13. See also PLEASURE GROUNDS.

Public Policy, the principles under which the freedom of contract or private dealings is restricted by law for the good of the community. See, e.g., the titles CHAMPERTY; RESTRAINT OF MARRIAGE; RESTRAINT OF TRADE; MORTMAIN.

Public prosecutor, the Queen, in whose name criminals are prosecuted, because all offences are said to be against the Queen's peace, her Crown and dignity. By the Prosecution of Offences Act, 1879, 42 & 43 Vict. c. 22, an officer called the 'Director of Public Prosecutions' may be appointed with six assistants, and such an officer (J.B. Maule, Esq., Q.C.), with one assistant, was appointed shortly after the commencement of the Act in 1880; but the Prosecutions of Offences Act, 1884, 47 & 48 Vict. c. 54, revoked all appointments made under the Act of 1879, and constituted the Solicitor to the Treasury Director of Public Prosecutions. By the same Act the chief officer of every police district becomes bound to give information from time to time to such Director with respect to indictable offences alleged to have been committed within his district.

For the Regulations of the Attorney-General describing the cases in which the public prosecutor is to act, etc., etc., see *Chit. Stat. for* 1886, p. 30. As to Scotland, see PROCURATOR FISCAL; ADVOCATE, LORD.

Public Records (Ireland) Act, 1867, 30 & 31 Vict. c. 70, amended by 38 & 39 Vict. c. 59.

Public schools. Schools open to all, subject to the terms of their foundation and the regulations of some governing body, private schools being only open to such pupils as the head master chooses to admit. The term has in modern times been confined to the larger public schools, such as Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury, the governing bodies of which were, by the 'Public Schools Act, 1868,' 31 & 32 Vict. c. 118, empowered to make new regulations for their constitution and management, requiring confirmation by Order in Council. For list of Orders in Council under the Act in force on Jan. 1st, 1891, see *Pulling's Index to Statutory Rules and Orders* for 1891, p. 344.

Public Statues. See 17 & 18 Vict. c. 33, which placed public statues in the metropolitan police district under the control of the Commissioners of Works and Public Buildings; and see 24 & 25 Vict. c. 97, s. 39.

Public stores. By the Public Stores Act, 1875, 38 & 39 Vict. c. 25, various provisions are made for the protection of public stores and the punishment of persons improperly obtaining the same or obliterating the marks thereon. See further as to naval stores, 30 & 31 Vict. c. 119.

Public, true, and notorious, the old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.

Public verdict. See PRIVY VERDICT.

Public ways, highways.

Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), which repeals twenty-seven previous statutes on the same subject, makes provision for the constitution of a body to be called 'The Public Works Loan Commissioners,' who are authorised to make loans for certain public purposes which are enumerated in the first schedule to the Act.

The works for the purposes of which the Commissioners are authorised to lend money are as follows: Baths and wash-houses provided by local authorities; burial grounds provided by burial boards or (in Scotland) by burial boards or parochial boards; conservation or improvement of rivers or main drainage; docks, harbours, and piers, and any work for which the Public Works Loan Commissioners are authorised to lend by s. 3 of the Harbour and Passing Tolls Act, 1861 (24 & 25 Vict. c. 47); improvement of towns; labourers' dwellings; lighthouses, floating and other lights for the guidance of ships; buoys and beacons; lunatic asylums of any county or borough in Great Britain, or of any district or parochial board in Scotland; police stations and justices' rooms of any county or borough in Great Britain, and the offices connected therewith, also sheriff court buildings in Scotland; prisons; public

libraries and museums; any school-house or work for which a school-board is authorised to borrow under the Elementary Education Acts, 1870 and 1873 (33 & 34 Vict. c. 70, and 36 & 37 Vict. c. 86), or any Act amending the same, or under the Education (Scotland) Act, 1872 (35 & 36 Vict. c. 62); waterworks established or carried on by a sanitary or other local authority; Workhouses or poorhouses, and any work for which guardians of the poor, or (in Scotland) any parochial board, are authorised to borrow under the general Acts relating to the relief of the poor; any work for which a sanitary authority are authorised to borrow under the Public Health Act, 1875; any work for which police commissioners are authorised to borrow under the General Police and Improvement (Scotland) Act, 1862 (25 & 26 Vict. c. 101), and any Act amending the same; any work for which a local authority are authorised to borrow under the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), or any Act amending the same; any work for which the Commissioners are authorised to lend by any Act passed after the passing of this Act.

The Public Loans Remission Act, 1879, 42 & 43 Vict. c. 35, remits as irrecoverable certain loans for public or quasi-public purposes, of which the particulars are fully given in the schedule to the Act.

Public Worship Regulation Act, 1874, 37 & 38 Vict. c. 85. By this Act—which proceeds on the preamble that it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of divine service according to the use of the Church of England—it was provided that whensoever a vacancy should occur in the office of official principal of the Arches Court of Canterbury (see ARCHES COURT), the judge appointed under that Act should become *ex officio* such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken in the Arches Court of Canterbury. The Court may be set in motion on representation by one archdeacon, or churchwarden, or any three parishioners declaring themselves to be members of the Church of England:—(1) that in any church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church; or (2) that the incumbent has within the preceding twelve months used or permitted to be used in any church or burial ground any unlawful ornament of the minister of the church; or neglected to use any prescribed ornament or vesture; or (3) that the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance in such a church or burial ground, of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from, such services, rites, and ceremonies. Rules and Orders have been issued under the Act. Lord Penzance was appointed judge shortly after its passing. The Act has been set in motion upon but few occasions, and the meaning and effect of it has been vigorously contested upon each of them, sometimes on very technical points. See, e.g., *Hudson* v. *Tooth*, 3 *Q. B. D.* 46, and *ex parte Dale*, 6 *Q. B. D.* 876, in which latter case the Rev. T. P. Dale, after having been committed to prison by Lord Penzance, was discharged by writ of Habeas Corpus granted by the Court of Appeal. The Rev. S. F. Green, however, was imprisoned by a valid sentence, and discharged only upon his benefice becoming void (see s. 13 of the Act).

Pudzeld, to be free from the payment of money for taking wood in a forest.—*Co. Litt.* 233 *a*. See WOODGILD.

Pueri sunt de sanguine parentum sed pater et mater non sunt de sanguine puerorum. 3 Co. 40.—(Children are of the blood of their parents, but the father and mother are not of the blood of the children.)

Pueritia, the age from seven to fourteen.

Puffer, one who attends a sale by auction, to bid on the part of the owner, for the purpose of raising the price and exciting the eagerness of the bidders.

'The Sale of Land by Auction Act, 1867,' 30 & 31 Vict. c. 48, regulates the employment of puffers at an auction for the sale of land, and enacts that all sales of land where a puffer has bid shall be illegal unless a right of bidding on behalf of the owner shall have been reserved; that the conditions of sale shall state whether the sale is to be without reserve, or subject to a reserved price, or whether a right to bid is reserved; that if it be stated that the sale is to be without reserve, a puffer is not to be employed: that if a right to bid be reserved the seller or one puffer may bid; and that the practice of opening biddings, formerly sanctioned by courts of equity, shall be discontinued.

Pugilism. See PRIZEFIGHTING.

Puis darrein continuance (*since the last continuance*) **Plea.** If any matter of defence arose after the defendant had pleaded, and before the jury had delivered their verdict, the defendant might, within eight days after

such matter of defence arose, avail himself of it by a plea *puis darrein continuance*, before the abolition of the entry of continuances, but since more properly denominated a plea to the further maintenance of the action. It could not be pleaded after a demurrer or verdict. There must have been an affidavit of its truth, and also of the matters thereof having arisen within eight days, unless the court or a judge otherwise ordered.

'Pleading after action' is regulated by Order XXIV. of the rules of the Supreme Court.

Puisne [fr. *puisné*, Fr.], junior, inferior, lower in rank. The several judges and barons of the former Common Law Courts at Westminster, other than the chiefs, were called *puisné*, and this title seems rightly to belong to all Judges of the High Court not having a distinctive title.

Pulsator [fr. *pulso*, Lat., to accuse], the plaintiff or actor,

Punchayet, an arbitration.—*Indian.*

Punctuation, has no place in deeds or weight in Acts of Parliament. See *Maxwell on Stat.*

Pund-brech, pound-breach.

Pundit, an interpreter of the Hindoo law, a learned Brahmin.—*Indian.*

Punishment, the penalty for transgressing the law; in England usually left within very wide limits to the discretion of the Court.

Pupil, a ward: one under the care of a guardian.

Pupilarity, non-age.

Pur autre vie, Tenant, tenant for the life of another; he has a freehold estate, whereas a tenant for years, however many, has only a chattel interest.

Purchase [fr. *perquisitio*, or *conquæstus*, Lat., according to the feudists], in its popular sense, an acquisition of land, obtained by way of bargain and sale, for money or some other valuable consideration; in its legal acceptation, an acquisition of land in any lawful manner, other than by descent, or the mere act of law, and including escheat, occupancy, prescription, forfeiture, and alienation. See 2 *Br. & Had. Com.* 408 *et seq.*

Purchase, Words of, those by which, taken absolutely, without reference to or connection with any other words, an estate first attaches, or is considered as commencing in point of title, in the person described by them; such as the words 'son,' 'daughter.'

Purchaser, a buyer, a vendee; also the root of descent, from whom, as the *terminus à quo*, it is in every case to be traced.

To the intent, then, that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title shall require, the 3 & 4 Wm. IV. c. 106, enacts that *the person last entitled to the land* (which expression shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof (s. 1)), shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and, in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same (s. 2).

Purchaser of a note or bill, the person who buys a promissory note or bill of exchange from the holder without his endorsement. In such cases, if the note or bill should turn out to be bad, the purchaser has no claim against the vendor, unless the latter knew at the time of the sale that it was of no value.

Purgation, the clearing a person's self of a crime of which he was publicly suspected and accused before a judge. It was either *canonical*, which was prescribed by the canon law, the form whereof, used in the spiritual court, was that the person suspected took his oath that he was clear of the facts objected against him, and brought his honest neighbours with him to make oath that they believed he swore truly; or *vulgar*, which was by fire or water-ordeal, or by combat. It is entirely abolished.

Purging contempt, atoning for, or clearing oneself from contempt of court (*q.v.*). It is generally done by apologising and paying fees, and is generally admitted after a moderate time in proportion to the magnitude of the offence.

Purificatio Beatæ Mariæ Virginis, the Purification of the Blessed Virgin Mary, which falls on the second day of February in every year.

Puritans. See DISSENTERS.

Purlieu [fr. *pourallée*, Fr.], land formerly added to an ancient forest by unlawful encroachment, and disafforested by the Charta de Foresta.—4 *Inst.* 303. See 1 *Steph. Com.*, *Manwood*, c. 20.

Purlieu-men, those who have ground within the purlieu to the yearly value of 40*s.* a year freehold, are licensed to hunt in their own purlieus.—*Manwood's For. Laws*, c. 20, s. 8.

Purparty, share, part in a division.

Purprestura, vel porprestura, dicitur, quando aliquid super dominum regem injustè occupatur, ut in dominicis regiis, vel in viis publicis

obstructis, vel in aquis publicis transversis à recto cursu, vel quando aliquis in civitate super regiam plateam aliquid ædificando occupaverit. Et generaliter, quotiens aliquid sit ad nocumentum regii tenementi, vel regiæ viæ vel civitatis, placitum inde ad coronam domini regis pertinet. Glanv. l. 9, c. 11.—(A purpresture is so called, when anything is occupied against the Sovereign unjustly, as in the royal domains, or when anything is placed as an obstruction on the high roads, or in the public rivers, against the right course, or when any person in a town has erected a building on the royal highway. And generally, as often as there is anything to the injury of the royal domain, or royal road or state, the plea thence belongs to the Crown.)

Purpresture. See last title.

Purprise [fr. *purprisum*, law Lat.], a close or enclosure; as also the whole compass of a manor.

Purpure, or **Porprin,** the colour commonly called purple, expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called *Mercury*, and in those of peers *Amethyst.—Heraldic term.*

Pursebearer to the Lord Chancellor. The 37 & 38 Vict. c. 81, s. 7, makes provision for the abolition of this office.

Pursuance, prosecution, process.

Pursuer, a plaintiff is so called in Scotch law.

Pursuivant. See POURSUIVANT.

Purus idiota (*a congenital idiot*). See 2 *Steph. Com.*

Purveyance. See POURVEYANCE.

Purview, the body of a statute as distinguished from the preamble; the general scope and object of a statute.—2 *Inst.* 403; 12 *Rep.* 20.

Putage, Putagium, incontinence.—*Spelm; Cowel.*

Putagium hæreditatem non adimit. 1 Reeves' Hist. c. iii., p. 117.—(Incontinence does not take away an inheritance.)

Putative, supposed, reputed; used of a man supposed to be the father of an illegitimate child, and proceeded against as such by the mother under the Bastardy Laws Amendment Act, 1872, 35 & 36 Vict. c. 65.

Putts and refusals, time-bargains, or contracts for the sale of supposed stock on a future day. They were forbidden by the 7 Geo. II. c. 3, s. 1 (the Stock Jobbing Act), repealed by 23 & 24 Vict. c. 28. See GAMING.

Puture, a custom claimed by keepers in forests, and sometimes by bailiffs of hundreds to take man's meat, horse's meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, etc. The land subject to this custom is called *terra putura.* Others, who call it *pulture*, explain it as a demand in general; and derive it from the monks, who before they were admitted, *pulsabant*, knocked at the gates for several days together.—4 *Inst.* 307; *Cowel.*

Pyke, Paik, a foot-passenger; a person employed as a night-watch in a village, and as a runner or messenger on the business of the revenue.—*Indian.*

Pyx. See PIX.

Q.

Quâ, in the character of, in virtue of being.

Quâcunque viâ datâ, whichever way you take it.

Quadragesima, the time of Lent, because consisting of forty days.

Quadragesimals, offerings formerly made, on Mid-Lent Sunday, to the mother Church.

Quadragesms, the third part of the year-books of Edward III.—3 *Reeves*, c. xvi. 148.

Quadrans, the fourth of a whole.—*Civ. Law.*

Quadrant, an angular measure of 90 degrees.

Quadrantata terræ, a quarter of an acre, now called a rood.

Quadriennium utile, the term of four years allowed to a minor after his majority, in which he might by suit or action endeavour to annul any deed to his prejudice granted during his minority.—*Bell's Scotch Law Dict.*

Quadripartite, having four parties; divided into four parts.

Quadruplatores, informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Quadruplicato [Lat.], a surrebutter.—*Civ. Law.* See *Colquhoun's Rom. Civ. Law*, s. 2267.

Quæ ab initio inutilis fuit institutio ex post facto convalescere non potest. D. 50, 17, 210.—(That which was a useless institution at the commencement cannot grow strong by an after-fact.)

Quæ accessionum locum obtinent extinguuntur cum principales res peremptæ fuerint. 2 Pothier, Oblig. 202.—(Those things which are incidents are extinguished when the principles (to which they are incident) are extinguished.)

Quæ ad unum finem loquuta sunt, non debent ad alium detorqueri. 4 Co. 14.—(Those words which are spoken to one end, ought not to be perverted to another.)

Quæ cohærent personæ à personâ separari

nequeunt. Jenk. Cent. 28.—(Things which belong to the person ought not to be separated from the person.)

Quæ communi legi derogant strictè interpretantur. Jenk. Cent. 221.—(Those things which derogate from the Common Law are to be strictly interpreted.)

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam. 12 Co. 75.—(Things introduced contrary to the reason of law ought not to be drawn into a precedent.)

Quæcunque intra rationem legis inveniuntur intra legem ipsam esse judicantur. 2 Inst. 689.—(What things soever appear within the reason of a law, are to be considered within the law itself.)

Quæ dubitationis causâ tollendæ inseruntur communem legem non lædunt. Co. Litt. 205. —(Things which are inserted for the purpose of removing doubt, hurt not the Common Law.)

Quæ est eadem (*which is the same*). In trespass and other actions, when the plea necessarily stated the trespass to have been committed at some other time, place, etc., than that laid in the declaration, it was usual, before the conclusion of the plea, to allege, that the supposed trespasses mentioned in the plea were the same as those whereof the plaintiff had complained. This allegation was usually termed *quæ est eadem.* It was equivalent to a traverse of the time and place named in the declaration.—1 *Chit. Pleading*, 581.

Quæ incontinenti vel certò fiunt, inesse videntur. Lofft. 591.—(Things which are done directly and certainly, appear to be inherent.)

Quæ in curiâ regis acta sunt ritè agi præsumuntur. 3 Buls. 43.—(Things done in the king's court are presumed to be rightly done.)

Quæ in partes dividi nequeunt solida à singulis præstantur. 6 Co. 1.—(Services which are incapable of division are to be performed in whole by each individual.)

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt. Ibid.—(Transactions between strangers ought to hurt no man, but may benefit.)

Quæ in testamento ita sunt scripta, ut intelligi non possint, perinde sunt ac si scripta non essent. D. 50, 17, 73, s. 3.—(Those things which in a testament are so written as not to be intelligible, are regarded as if they had not been written.)

Quæ legi communi derogant strictè interpretantur. Jenk. Cent. 29.—(Those things which are derogatory to the Common Law are to be strictly interpreted.)

Quæ legi communi derogant non sunt trahenda in exemplum.—(Things derogatory to the Common Law are not to be drawn into a precedent.)

Quælibet concessio domini regis capi debet strictè contra dominum regem, quando potest intelligi duabus viis. 3 Leonard, 243.—(Every grant of our lord the king ought to be taken strictly against our lord the king, when it can be understood in two ways.)

Quælibet concessio fortissimè contra donatorem interpretanda est. Co. Litt. 183.—(Every grant is to be most strongly taken against the grantor.)

Quælibet jurisdictio cancellos suos habet. Jenk. Cent. 137.—(Every jurisdiction has its own bounds.)

Quælibet narratio super brevi locari debet in comitatu in quo breve emanavit.—(Every count upon the writ ought to be laid in the county in which the writ arose.)

Quælibet pardonatio debet capi secundum intentionem regis, et non ad deceptionem regis. 3 Buls. 14.—(Every pardon ought to be taken according to the intention of the king, and not to the deception of the king.)

Quælibet pœna corporalis, quamvis minima, major est quâlibet pœnâ pecuniariâ. 3 Inst. 220.—(Every corporal punishment, although the very least, is greater than any pecuniary punishment.)

Quæ mala sunt inchoata in principio vix bono peraguntur exitu. 4 Co. 2.—(Things bad in principle at the commencement seldom achieve a good end.)

Quæ non valeant singula, juncta juvant.—3 Buls. 132.—(Things which do not avail when separate, when joined avail.)

Quæ plura, a writ which lay where an inquisition had been taken by an escheator of lands, etc., of which a man died seised, and all the land was supposed not to be found by the office or inquisition; it was to inquire of *what more* lands or tenements the party died seised.—*Reg. Orig.* 293. Rendered useless by 12 Car. II. c. 24.

Quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur. 4 Co. 78.—(Things which are done contrary to the custom and usage of our ancestors neither please nor appear right.)

Quæ rerum naturâ prohibentur, nullâ lege confirmata sunt. Finch 74.—(Things which are prohibited by the nature of things are confirmed by no law.)

Quæ sunt minoris culpæ sunt majoris infamiæ. Co. Litt. 6.—(Things which are of the smaller guilt are of the greater infamy.)

Quærens non invenit plegium (*the plaintiff has not found pledge*), a return made by a sheriff upon certain writs directed to him

with this clause: *Si A. fecerit B. securum de clamore suo prosequendo, etc.*—*F. N. B.* 38.

Quærere dat sapere quæ sunt legitima verè. Litt. s. 443.—(To inquire into is the way to know what things are truly lawful.)

Quæritur ut crescant tot magna volumina legis. In promptu causa est, crescit in orbe dolus. 3 Co. 82.—(It is questioned how so many books of law increase. The reason is plain; deceit increases in the world.)

Quæsta, an indulgence or remission of penance, sold by the pope.

Quæstio, a commission to enquire into a criminal matter.—*Civ. Law.*

Quæstionarii, those who carried *quæsta* about from door to door.

Quæstor, or **Questor,** a Roman magistrate.

Quæstus, that estate which a man has by acquisition or purchase, in contradistinction to *hæreditas*, which is what he has by descent. —*Glanv.* l. 7, c. 1.

Quaker, the statutory, as well as the popular, name of a member of a religious society, by themselves denominated Friends.

As to affirmations by Quakers instead of oaths, see AFFIRMATION; and the repealed 9 Geo. IV. c. 32, s. 1; 3 & 4 Wm. IV. c. 49; 1 & 2 Vict. cc. 5, 15, and 22 Vict. c. 10. As to their marriages, see 6 & 7 Wm. IV. c. 85; 3 & 4 Vict. c. 75; 10 & 11 Vict. c. 58. 19 & 20 Vict. c. 119; 23 & 24 Vict. c. 197; and 35 Vict. c. 10.

Quale jus, a judicial writ, which lay where a man of religion had judgment to recover land before execution was made of the judgment; it went forth to the escheator between judgment and execution, to inquire what *right* the religious person had to recover, or whether the judgment were obtained by the collusion of the parties, to the intent that the lord might not be defrauded. —*Reg. Jud.* 8.

Qualification, that which makes any person fit to do a certain act; also, abatement, diminution.

An annual Act used to be passed indemnifying persons who have omitted to qualify themselves for certain offices and employments, and to extend the time limited for those purposes. See 26 & 27 Vict. c. 107. But now by the 29 Vict. c. 22, it is rendered unnecessary to make and subscribe declarations theretofore required as a qualification for offices and employments.

Qualification Act to kill game, 22 & 23 Car. II. c. 25, abolished by 1 & 2 Wm. IV. c. 32. See GAME.

Qualified, a term applied to a person enabled to hold two benefices. See PLURALITY.

Qualified fee. See BASE FEE.

Qualified indorsement, an indorsement *sans recours*, i.e., without recourse to the indorser for payment.—*Byles*, 11th ed., 151.

Qualified oath, a circumstantial oath.

Qualified property, an ownership of a special and limited kind. It may arise either from the peculiar circumstances of the subject matter, which render it incapable of being under the absolute dominion of any proprietor, as in the case of animals *feræ naturæ*, or from the peculiar circumstances of the owner, the thing itself being capable of absolute ownership, as in the case of a bailment.

Qualify (*v.n.*), to become qualified.

Qualitas quæ inesse debet, facilè præsumitur. Jur. Civ.—(A quality which ought to form a part is easily presumed.)

Quality of estate, the period when, and the manner in which, the right of enjoying an estate is exercised. It is of two kinds: (1) the period when the right of enjoying an estate is conferred upon the owner, whether at present or in future; and (2) the manner in which the owner's right of enjoyment of his estate is to be exercised, whether solely, jointly, in common, or in coparcenary.

Quamdiu se bene gesserit (*as long as he shall behave himself well*), a clause frequent in letters patent or grants of certain offices, as that of Recorder, to secure them so long as the persons to whom they are granted shall not be guilty of abusing them—the opposite clause being *durante bene placito* (during the pleasure of the grantor), as that of Town Clerk, which office is held during the pleasure of the Town Council.

Quam longum debet esse rationabile tempus non definitur in lege, sed pendet ex discretione justiciariorum. Co. Litt. 56.—(How long *reasonable time* ought to be is not defined by law, but depends upon the discretion of the judges.)

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. 2 Inst. 564.—(Although a thing in itself may not be bad, yet, if it hold out a bad example, it is not to be done.)

Quando abest provisio partis, adest provisio legis. See 13 C. B. 960.—(When provision of party is lacking, provision of law is present.)

Quando acciderint (*when they may fall in*). See PLENE ADMINISTRAVIT.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. 5 Rep. 116.—(When anything is commanded, everything by which it can be accomplished is also commanded.)

Quando aliquid prohibetur ex directo, prohibetur et per obliquum. Co. Litt. 223.—(When anything is prohibited directly, it is prohibited also indirectly.)

Quando aliquid prohibetur, prohibetur omne

per quod devenitur ad illud. 2 Inst. 48.—(When anything is prohibited, everything which tends towards it is prohibited.)

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia. 8 Co. 154.—(When a charter contains a general clause, and afterwards descends to special words, which are agreeable to the general clause, the charter is to be interpreted according to the special words.)

Quando de unâ et eâdem re duo onerabiles existunt, unus, pro insufficientiâ alterius, de integro onerabitur. 2 Inst. 277.—(When there are two persons liable for one and the same thing, one for the other's default will be charged for the whole.)

Quando dispositio referri potest ad duas res ita quod secundum relationem unam vitiatur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio. 6 Co. 76.—(When a disposition may refer to two things, so that by the former it would be vitiated, and by the latter it would be preserved, then the relation is to be made to the latter, so that the disposition may be valid.)

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem. 10 Co. 49.—(When to the perfection of an estate divers acts are requisite, the law has more regard to the original act.)

Quando duo jura concurrunt in unâ personâ, æquum est ac si essent in diversis. 4 Co. 118.—(When two rights concur in one person, it is the same as if they were in separate persons.)

Quando jus domini regis et subditi concurrunt, jus regis præferri debet. 9 Co. 129.—(When the right of king and of subject concur, the king's right should be preferred.)

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. 5 Co. 47.—(When the law gives a man anything, it gives him that without which it cannot exist.)

Quando lex aliquid alicui concedit, omnia incidentia tacitè conceduntur. 2 Inst. 326.—(When the law gives anything to any one, all incidents are tacitly given.)

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. 2 Inst. 83.—(When the law is special, but its reason general, the law is to be understood generally.)

Quando mulier nobilis nupserit ignobili, desinit esse nobilis nisi nobilitas nativa fuerit. 4 Co. 118.—(When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her.)

Quando plus fit quàm fieri debet, videtur etiam illud fieri quod faciendum est. 5 Rep. 115.—(When more is done than ought to be done, that too seems to be done which still remains to be done.)

Quando res non valet ut ago, valeat quantum valere potest. Cowp. 600.—(When anything does not operate in the way I intend, let it operate as far as it can.)

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum. 10 Co. 191.—(When the words of a statute are special, but the reason general, the statute is to be understood generally.)

Quantity of estate, its time of continuance, or degree of interest as in fee, during life, or for years. See QUALITY OF ESTATE.

Quantum damnificatus, Issue. This was directed by Chancery to be tried at law to fix the amount of compensation for damage, which prior to 21 & 22 Vict. c. 27 could not be awarded in Chancery.

Quantum meruit (*so much as he has deserved*), an action on the case, express or implied, grounded on a promise to pay the plaintiff for doing a thing as much as he deserved or merited. Abolished in effect as a form of action by the rules H. T. 1 Wm. IV.; but the term is in use to meet the cases where a plaintiff failing to prove a special contract to pay him a particular amount, recovers what may be considered to be the value of his work, in which case he is said to recover on a *quantum meruit.*

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet præter solam reverentiam; mutua debet esse dominii et homagii fidelitatis connexio. Co. Litt. 64.—(As much as the tenant by his homage owes to his lord, so much is the lord, by his lordship, indebted to the tenant, except reverence alone; the tie of dominion and of homage ought to be mutual.)

Quantum valebat (*so much as it was worth*), where goods, etc., were delivered at no certain price, or for as much as they were worth in general, then *quantum valebat* lay, and the plaintiff was to aver them to be worth so much, as where the law obliged one to furnish another with goods or provisions, as an innkeeper to his guests, etc. Abolished as a form of action by the rules H. T. 1 Wm. IV.

Quarantine, or **Quarentaine.** By Magna Charta, the widow shall not be distrained to marry afresh, if she choose to live without a husband, but she shall not, however, marry against the consent of the lord; and nothing shall be taken for assignment of her dower, but she shall remain in her husband's capital

mansion-house for forty days after his death, during which time her dower shall be assigned. These forty days are called the widow's *quarantine*. Marriage during these forty days forfeits the quarantine. This right was enforced by writ of *Quarantinâ habendâ*. See 1 *Steph. Com.*

2. A quantity of land containing forty perches.—*Leg. Hen. I.* c. 16.

3. A regulation by which communication with persons, ships, or goods arriving from places infected with the plague, or other contagious disease, or liable thereto, is interdicted for a certain period. The term is derived from the Italian *quaranta*, forty; it being supposed, that if no infectious disease break out within forty days or six weeks no further danger need be apprehended. During this period, all the things which were supposed capable of retaining infection are subjected to a process of purification. The notion that the plague was imported from the East into Europe seems to have prevailed in all ages. The Venetians were the first who endeavoured to guard against its introduction from abroad, by obliging ships and persons coming from suspected places to perform quarantine. The regulations upon this subject were, probably, issued for the first time in 1414.—*Beckman, Hist. of Inven.*, vol. ii., art. 9 '*Quarantine.*' They have since been gradually adopted in every other country. Their introduction into England was comparatively late. Various preventive regulations had been previously enacted, but quarantine was not systematically enforced till after the alarm occasioned by the dreadful plague at Marseilles in 1720. The regulations then adopted were made conformably to the suggestions of the celebrated Dr. Mead, in his famous 'Discourse concerning Pestilential Contagion.'

The existing quarantine regulations are embodied in 6 Geo. IV. c. 78 (and see part 3 of sched. 5 of the Public Health Act, 1875), and the different Orders in Council issued under its authority. These orders specify what vessels are liable to perform quarantine, the places at which it is to be performed, and the various formalities and regulations to be complied with. The publication in the *Gazette* of any Order in Council with respect to quarantine is deemed sufficient notice to all concerned, and no excuse of ignorance is admitted for any infringement of the regulation. To obviate any foundation for such plea, it is ordered that vessels clearing out for any port or place with respect to which there shall be at the time any Order in Council subjecting vessels from it to quarantine, are to be furnished with an abstract of the quarantine regulations.—*McCull. Com. Dict.*

Quare clausum fregit (*wherefore he broke the close*). Trespass is of three kinds: (1) to the person; (2) to the goods; and (3) to the lands of the plaintiff. The action for the third kind of trespass is often termed trespass *quare clausum fregit*, from the language of the old writ, which commanded the defendant to show *quare clausum querentis fregit* why he broke the close of the plaintiff.—*Steph. Com.*, bk. 5, ch. 7, sect. 2.

Quare ejecit infra terminum (*wherefore he ejected within the term*), a writ which lay by the ancient law where the wrongdoer or ejector was not himself in possession of the lands, but another who claimed under him.

Quare impedit (*wherefore he hindered*), a real possessory action, which could formerly be brought only in the Court of Common Pleas, or the Common Pleas Division of the High Court (see COMMON PLEAS), and lies to recover a presentation, when the patron's right is disturbed, or to try a disputed title to an advowson. If the right of nomination be in one person, and that of presentation in another, this action lies by the nominator for disturbing his right, either against the presentor before presentation, or against the incumbent after. If two patrons present to one and the same church by several titles, the church is become litigious, because the bishop knows not which has the true and rightful title; in that case, if the bishop admits the clerk of the one, he puts the other out of possession, and consequently to his action; and the bishop becomes a disturber, if he who is put out of possession prove to have a better title. If opposition be intended, it is usual for each party to enter a *caveat* with the bishop, to prevent the institution of the other's clerk; but to this *caveat* the temporal courts pay no regard, viewing a *caveat* as a mere nullity.—*Mirehouse on Advows.* 265.

A plaintiff must show an actual seisin to maintain this writ, and prove, when the title is disputed, a presentment by himself, his ancestor, or some person under whom he claims, and the institution and induction of the presentee.

When the title is not involved (as under the former general issue, *ne disturba pas*), the plaintiff either takes judgment, or proceeds for damages consequent upon the disturbance; the proofs being the presentation, the bishop's refusal, and the presentation or institution of the other clerk.

If the delay of presentation arise from the bishop alone, as upon a pretence of incapacity, or the like, then he only is named in

the writ; but if there be another presentation set up, then the pretended patron and his clerk are also joined in the action; or it may be brought against the patron and clerk, leaving out the bishop; or against the patron only.

But it is most advisable to bring it against all three; for (1) if the bishop be left out, and the suit be not determined till the six months are past, the bishop is entitled to present by lapse, as he is not a party to the suit; but if he be named, and there has been a disturbance before the action, no lapse can possibly accrue till the right is determined. Should, however, the church be full, and there is not any danger of lapse, the bishop need not be joined. (2) If the patron be left out, and the writ be brought only against the bishop and the clerk, the suit is of no effect, and the writ shall abate, for the right of the patron is the principal question in the cause. (3) If the clerk be left out, and have received institution before the action brought (as is sometimes the case), the patron by this suit may recover his right of patronage, but not the present turn; for he cannot have judgment to remove the clerk, unless he be made a defendant and party to the suit, to hear what he can allege against it.

Previous to the passing of the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), the action was commenced by an original writ issuing out of Chancery, but s. 26 of that Act did away with this singularity of procedure, which is now the same as in other actions in the High Court.

The judgment is that the successful party recover his presentation, and a writ issues to the bishop, commanding him to admit his presentee.

Quare incumbravit, a writ which lay against a bishop, who, within six months after the vacation of a benefice, conferred it on his clerk, whilst two others were contending at law for the right of presentation, calling upon him to show cause why he had incumbered the church. —*Reg. Orig.* 32. Abolished by 3 & 4 Wm. IV. c. 27.

Quare intrusit, a writ that formerly lay where the lord proffered a suitable marriage to his ward, who rejected it, and entered into the land, and married another, the value of his marriage not being satisfied to the lord. Abolished by 12 Car. II. c. 24.

Quare non admisit, a writ to recover damages against a bishop who does not admit a plaintiff's clerk. It is, however, rarely or never necessary; for it is said that a bishop refusing to execute the writ *ad admittendum clericum*, or making an insufficient return to it, may be fined.—*Wats. Cler. Law*, 302.

Quare non Permittit, an ancient writ, which lay for one who had a right to present to a church for a turn against the proprietary. —*Fleta*, l. 5, c. 6.

Quare obstruxit, a writ which lay for him who, having a liberty to pass through his neighbour's ground, could not enjoy his right, because the owner had obstructed it.—*Fleta*, l. 4, c. 26.

Quarentena terræ, a furlong.—*Co. Litt.* 5 *b*.

Quarrel, a dispute, contest; also, an action real or personal.

Quart, the fourth part of a gallon.

Quarter, a length of four inches.

Quarter-days, the days which begin the four quarters of the year, viz., the 25th of March, or Lady-day; the 24th of June, or Midsummer-day; the 29th of September, or Michaelmas-day; and the 25th of December, or Christmas-day.

Quartering traitors. The judgment for high treason, as prescribed by 54 Geo. III. c. 146, s. 1, was that the head of the person after death by hanging should be severed from his body, and the body, divided into four quarters, should be disposed of as the Sovereign should think fit; but this portion of 54 Geo. III. c. 146, s. 1, is repealed by 33 & 34 Vict. c. 23, s. 31.

Quarter-rating. The rating on only one-fourth part of the net annual value—a privilege enjoyed by owners of railways and other kinds of property as mentioned in s. 211 of the Public Health Act, 1875, extended to allotments by the Allotments Rating Exemption Act, 1891.

Quarter-seal, the seal kept by the director of the Chancery in Scotland. It is in the shape and impression of the fourth part of the Great Seal; and is in the Scotch statutes called the Testimonial of the Great Seal. Gifts of land from the Crown pass this seal in certain cases.—*Bell's Scotch Law Dict.*

Quarter-sessions, the sittings of the whole body of the justices of the peace in a county, and of a Recorder in a borough, *four* times in each year, or oftener, to try certain indictable offences, and hear appeals from petty sessions. See SESSIONS OF THE PEACE.

Quarter of a year, ninety-one days.—*Co. Litt.* 135 *b*.

Quarto die post, the fourth day inclusive after a return of a writ, and if a defendant appeared then it was sufficient; but this practice was afterwards altered.—1 *Tidd's Pr.* 107.

Quash [*cassum facere*, Lat.; *casser*, Fr.], to overthrow or annul—*Bracton*;—as to quash an indictment, or order of justices, or a poor-rate.

Quasi. This word prefixed to a noun means that although the thing signified by

the combination of 'quasi' with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls philosophically under the same head, and is best marked by its approximation thereto. The titles next following furnish examples.

Quasi-contract, an act which has not the strict form of a contract, but yet has the effect of it; an implied contract.

Quasi-crime, or **Quasi-delict**, the action of one doing damage or evil involuntarily.

Quasi-entail. An estate *pur autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a *quasi*-entail; the interest so granted not being properly an estate-tail (for the statute *De Donis* applies only where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate-tail, that it will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. And such estate may also be granted with a remainder thereon during the life of the *cestui que vie*; and the alienation of the *quasi* tenant-in-tail will bar not only his issue, but those in remainder. The alienation, however, for that purpose (unlike that of an estate-tail, properly so called), may be effected by any method of conveyance, except a will.—1 *Steph. Com.*

Quasi-fee, an estate gained by wrong; for wrong is unlimited and uncontained within rules.

Quasi-personalty, things which are movable in point of law, though fixed to things real, either actually, as emblements (*fructus industriales*), fixtures, etc.; or fictitiously, as chattels-real, leases for years, etc.

Quasi-realty, things which are fixed in contemplation of law to realty, but movable in themselves, as heir-looms (or limbs of the inheritance), title-deeds, court rolls, etc.

Quasi-tenant at sufferance, an under-tenant, who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.

Quasi-traditio, the placing a person in possession of a right.

Quasi-trustee, a person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee.—*Lewin on Trusts.*

Quatuorviri, magistrates who had the care and inspection of roads among the Romans. —*Civ. Law.*

Quatuor Maria, the four seas, which see.

Quays. As to erection of quays in or near to a public harbour, or river communicating therewith, see 46 Geo. III. c. 153, amended by 25 & 26 Vict. c. 69, s. 15. See also the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), and see further HARBOURS.

Quebec. See 15 & 16 Vict. c. 53; 3 & 4 Vict. c. 35; and 10 & 11 Vict. c. 71.

Queen [fr. *cwen*, Sax., a wife], a woman who is sovereign of a kingdom. The queen regent, regnant, or sovereign is she who holds the Crown in her own right, as Queen Victoria, who has the same powers, prerogatives, rights, dignities, and duties as if she had been a king.

(1) With regard to the Queen's title, the Crown of England, by the positive constitution of the kingdom, has ever been, and is descendible in a course peculiar to itself, yet subject to limitation by Parliament; but notwithstanding those limitations, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.

(2) Her duties are to govern the people according to law, to execute judgment in mercy, and to maintain the established religion.

(3) Her prerogatives are—

(*a*) As to her dignity or royal character, which consists in the legal attributes of—

(*α*) Personal sovereignty.
(*β*) Absolute perfection.
(*γ*) Political perpetuity.

(*b*) As to her regal power, in which consists the executive part of government; in foreign concerns, the Queen, as the representative of the nation, has the right or prerogative of—

(*α*) Sending and receiving ambassadors.
(*β*) Making treaties.
(*γ*) Proclaiming war or peace.
(*δ*) Issuing reprisals.
(*ε*) Granting safe conducts.

In domestic affairs, the Queen is a constituent part of the supreme legislative power; she may negative all new laws, and is bound by no statute unless specially named therein. She is also considered as the general of the kingdom, and may raise fleets and armies, build forts, appoint havens, erect beacons, and prohibit the exportation of arms and ammunition. She is also the fountain of justice and general conservator of the peace, and therefore may erect courts (wherein she has a legal ubiquity), prosecute offenders, pardon crimes, and issue proclamations. She is likewise the fountain of honour, office, and privilege. The Queen is also the head of the church, and as such convenes, regulates, and dissolves synods, nominates bishops, and receives appeals in ecclesiastical causes.

At the commencement of the present reign a civil list was settled on Her Majesty for life

to the amount of 385,000*l.* per annum, payable quarterly, out of the Consolidated Fund, of which the sum of 60,000*l.* is assigned for Her Majesty's privy purse: in return for which grant it was provided that the hereditary revenues of the Crown should, during the present Queen's life, be carried to and form part of the Consolidated Fund.

Queen Anne's Bounty. See BOUNTY OF QUEEN ANNE.

Queen Consort, the wife of the reigning king. She is a public person, exempt and distinct from the king, for she is of ability to purchase lands and to convey them, to make leases, to grant copyholds, and to do other acts of ownership, without the concurrence of her husband. She has separate courts and offices distinct from the king's, not only in matters of ceremony, but even of law; and her attorney and solicitor-general are entitled to a place within the bar of His Majesty's courts, together with the king's counsel. She may likewise be sued, and sue alone without joining her husband; she is indeed considered as a *feme sole*, and not as a *feme covert*. She pays no toll, nor is she liable to any fine in any court. As to the security of her life and person, she is placed on the same footing with the king. See 1 *Br. & Had. Com.* 256.

Queen Dowager, the widow of a deceased king. She enjoys most of the privileges belonging to her as queen consort.

Queen Gold, a royal revenue which belonged to every queen consort during her marriage with the king. Quite obsolete.—2 *Steph. Com.*

Queen Regnant, or **Regent,** she who holds the Crown in her own right. See QUEEN.

Queen's Advocate. See ADVOCATE, QUEEN'S. Also an officer in Scotland, similar, but in some respects superior, to the Queen's Attorney-General in England. See ADVOCATE, LORD.

Queen's Bench. The Court of King's or Queen's Bench (so called because the king used formerly to sit there in person, the style of the court still being, *coram ipso rege*, or *coram ipsâ reginâ*) was a court of record, and the supreme court of Common Law in the kingdom, consisting of a chief justice and four *puisné* justices, who were by their office the sovereign conservators of the peace and supreme coroners of the land. Yet though the king himself used to sit in this court, and in later times was still supposed so to do, he did not, neither by law was empowered to, determine any cause or motion, but by the mouth of his judges to whom he committed his whole judicial authority.

This court, which was the remnant of the *aula regia*, was not, nor could be from the very nature and constitution of it, fixed to any certain place, but might follow the king's person wherever he went, for which reason all process issuing out of this court in the king's name was returnable '*ubicunque fuerimus in Angliâ.*' For some centuries, and until the opening of the Royal Courts, the court usually sat at Westminster, being an ancient palace of the Crown, but might remove with the King as he thought proper to command. And we find that after Edward I. had subdued Scotland, it sat at Roxburgh; and this movable quality, as well as its dignity and power, are fully expressed by Bracton where he says that the justices of this court are: '*capitales generales perpetui et majores; a latere regis residentes; qui omnium aliorum corrigere tenentur injurias et errores.* And it is moreover especially provided, in the *articuli super chartas*, that the king's chancellor and the justices of his bench shall follow him, so that he may have at all times near unto him some that be learned in the laws.

The jurisdiction of this court was very high. It kept all inferior jurisdictions within the bounds of their authority, and might either, by writ of *certiorari*, remove their proceedings to be determined here, or, by writ of *prohibition*, prohibit their progress below. It superintended all civil operations in the kingdom. (See QUO WARRANTO.) By writ of *mandamus* it commanded magistrates to do what their duty required in every case where there was no other specific remedy. By writ of *habeas corpus* it protected the liberty of the subject by speedy and summary interposition. It took cognizance both of criminal and civil causes: the former in what is called the Crown side or Crown office, the latter in the plea side of the court. On the Crown side it took cognizance of all criminal causes, from high treason down to the most trivial misdemeanour or breach of the peace. Into it also indictments from all inferior courts might be removed by writ of *certiorari*, and be tried either at bar, or at *Nisi Prius*, or some extreme cases at the Central Criminal Court under 19 & 20 Vict. c. 16. See CERTIORARI; HABEAS CORPUS; MANDAMUS; QUO WARRANTO.

On the plea side it exercised a general jurisdiction over all actions between subject and subject, with the exception of real actions and suits concerning the revenue. Its jurisdiction in civil actions was formerly limited to trespass or injuries said to have been committed *vi et armis*, but by means of fictitious proceedings called *Bill of Middlesex* and *Latitat* (which see), it usurped jurisdiction over all personal actions; direct jurisdiction

in all such actions being given by 2 Wm. IV. c. 39, which abolished these fictitious proceedings. Error lay from this Court to the Exchequer Chamber.

Connected with the Court of Queen's Bench, and auxiliary thereto, was the Practice Court, usually presided over by one of the *puiné* judges in rotation. The Practice Court (called also the Bail Court) heard and determined common matters of practice, and ordinary motions for writs of *mandamus*, prohibition, etc.

In the time of the Commonwealth, the King's Bench sat under the name of the Upper Bench.

The jurisdiction of this court was assigned, by s. 34 of the Jud. Act, 1873, to the Queen's Bench Division of the High Court of Justice, and by Order in Council under s. 32 of the same Act, the Common Pleas and Exchequer Divisions were, in February 1881, merged in the same 'Queen's Bench Division.' The Lord Chief Justice of England, besides being an *ex officio* judge of the Court of Appeal (Jud. Act, 1875, s. 4), is President of the Division (Jud. Act, 1873, s. 31).

Queen's Coroner and Attorney, an officer on the Crown side of the Queen's Bench.—6 & 7 *Vict.* c. 20. By 23 & 24 Vict. c. 54, the office of Assistant Master of the Crown Office is abolished; and the officers on the Crown side of the court are to be the Queen's Coroner and Attorney, and one master. By the Judicature Act, 1875, s. 29, certain annual payments by and to the Queen's Coroner and Attorney are discontinued. By the Judicature (Officers) Act, 1879, the Queen's Coroner and Attorney became a 'Master of the Supreme Court.'

Queen's Counsel, barristers appointed counsel to the Crown, and called within the bar. They answer in some measure to the advocates of the revenue, *advocati fisci*, among the Romans. They must not be employed against the Crown without special license, which is not refused unless the Crown desires to be represented by the individual in the case. Each King's Counsel had a small salary, but it is not so now. Under the 13 & 14 Vict. c. 25 (repealed by Stat. Law Rev. Act, 1875), they might act as judges of assize when named in the commission, and may, and often do, act as such judges, as being 'persons usually named in the commission' under s. 29 of the Jud. Act, 1873, and being expressly authorised so to be named by s. 37 of that Act.

Queen's Evidence. See APPROVER.

Queen's Printer has the liberty of printing the Bible, Prayer-book, Statutes, and Acts of State, to the exclusion of all other presses, except those of the two universities. By 8 & 9 Vict. c. 113, s. 3, all copies of *private*, local, and personal Acts of Parliament, *not public Acts*, if purported to be printed by the Queen's printers, and all copies of the journals of either House of Parliament, and of royal proclamations purporting to be printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all courts, etc., without any proof being given that such copies were so printed.

Queen's Prison, a jail which used to be appropriated to the debtors and criminals confined under process or by authority of the Superior Courts at Westminster, the High Court of Admiralty, and also to persons imprisoned under the bankrupt law. The 5 & 6 Vict. c. 22, amended by 11 & 12 Vict. c. 7, and 23 & 24 Vict. c. 60, consolidated the Queen's Bench, Fleet, and Marshalsea Prisons. See the Queen's Prison Discontinuance Act, 1862, 25 & 26 Vict. c. 104.

Queen's Proctor. As to his intervention in proceedings for divorce and for nullity of marriage, see title INTERVENTION.

Queen's Remembrancer, an officer on the revenue side of the Court of Exchequer, usually held by one of the masters of the court. See 22 & 23 Vict. c. 21, and 28 & 29 Vict. c. 104. He is now an officer of the Supreme Court (Jud. Act, 1873, s. 77).

Queensland, a separate colony, in the district of Moreton Bay, New South Wales. See *Gaz.*, June 3rd, 1849, and 24 & 25 Vict. c. 44.

Que estate [*quorum statum*, Lat.], as much as to say, whose estate he has. It is a defence where one entitling another to land, says that he and they whose estate he has have enjoyed the same. A person cannot prescribe in anything by a *que estate* that lies in grant, and cannot pass without deed or fine; but in him and his ancestors he may, because he comes in by descent without any conveyance. —1 *Inst.* 121; *Bl. Com.* 266; 2 *Br. & Had. Com.* 419. See PRESCRIPTION.

Que est le meme [*quæ est eadem*, Lat.], a term used in actions of trespass, etc., for a direct justification of the very act complained of by the plaintiff as a wrong. See QUÆ EST EADEM.

Quemadmodum ad quæstionem facti non respondent judices, ita, ad quæstionem juris non respondent juratores. Co. Litt. 295.—(In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law.)

Quem reditum reddit, an old writ which lay where a rent-charge, or other rent which was not rent service, was granted by fine holding of the grantor. If the tenant would

not attorn, then the grantee might have had this writ.—*O. N. B.* 126.

Querela, an action or declaration preferred in any court of justice.—*Cowel.* See DUPLEX, QUERELA, and AUDITA QUERELA.

Querela coram rege a concilio discutiendâ et terminandâ, a writ by which one is called to justify a complaint of a trespass made to the king himself, before the king and his council.—*Reg. Orig.* 124.

Querele, a complaint to a court.

Querent [fr. *querens,* Lat.], a plaintiff, complainant, inquirer.

Quest, inquest, inquisition, or inquiry.

Question, interrogatory; anything inquired. See TORTURE.

Questions of fact, might be stated in an issue without pleadings by consent (C. L. P. Act, 1852, s. 42), and all issues of fact might by consent be tried by a judge without a jury (C. L. P. Act, 1854, s. 1). See now TRIAL.

In general when a jury is sworn it decides all the issues of fact; but if there arise in the course of the trial a question of fact preliminary to the decision of a point of law, etc., e.g., the genuineness of a document as necessary to its being admitted in evidence, that question of fact must be decided by the judge.

So in questions as to the competence of a witness to be sworn. See VOIR DIRE; INCOMPETENT WITNESS; OATH.

The law of a foreign country is a question of fact. See FOREIGN LAW.

Questions of laws. See last title. See also JUDGMENT; SPECIAL CASE; and TRIAL.

Questman, or **Questmonger,** starter of lawsuits or prosecutions; also a person chosen to inquire into abuses, especially such as relate to weights and measures; also a churchwarden.—See *Prid. Churchwarden's Guide.*

Questus, land which does not descend by hereditary right, but is acquired by one's own labour and industry.—*Cowel.*

Questus est nobis, a writ of nuisance, which by 15 Edw. I. lay against him to whom a house or other thing that caused a nuisance descended or was alienated; whereas, before that statute the action lay only against him who first levied or caused the nuisance to the damage of his neighbour.—*Cowel.*

Qui abjurat regnum amittit regnum sed non regem; patriam sed non patrem patriæ. 7 Co. 9.—(He who abjures the realm leaves the realm, but not the king; the country, but not the father of the country.)

Qui adimit medium, dirimit finem. Co. Litt. 161.—(He who takes away the middle destroys the end.)

Qui aliquid statuerit parte inauditâ alterâ, æquum licet dixerit, haud æquum fecerit. 6 Co. 52.—(He who decides anything, one party being unheard, though he should decide right, does wrong.)

Quia Emptores, Statute of, 18 Edw. I. st. 1, c. 1, A.D. 1290, West. the Third. It is entitled in the parliament-roll, from the subject of it, *statutum regis de terris vendendis et emendis.* Prior to this statute any person might, by a grant of land, have created a tenure as of his person; but if no such tenure were reserved, the feoffee held of the feoffor by the same services by which the feoffor held of his superior lord. The consequence was, that all the fruits of tenure fell into the hands of the feoffors or mesne lords, to the prejudice of the superior lords of the fee; for remedy whereof it was by this statute enacted: 'That thenceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffor held before.'—2 *Inst.* 500; 2 *Reeves* c. 11, p. 223. See MANOR.

Qui alterius jure utitur eodem jure uti debet. Pothier, Tr. de Change, pt. 1, ch. 4, art. 5, s. 114; Broom's Leg. Max., 5th ed., 473.—(He who is clothed with the right of another ought to be clothed with the very same right.)

Quia Improvide Emanavit (*Because it issued mistakenly*). A supersedeas to quash and nullify a writ erroneously issued.

Quia Timet Bill. It was filed for the purpose of quieting a present apprehension of a probable or possible future injury to property. The same result may now be obtained by an action in the High Court of Justice. The Court adapts its relief so as to accomplish the ends of the precautionary justice required, and will either appoint a receiver to receive the rents or other income, or order the fund to be paid into court, or direct security to be given for its due preservation and appropriation, or issue its preventive writ of injunction. —*Sto. Eq. Jur.* c. 21., and 1 *Madd. Chan.* 294.

Quick with child. See ABORTION.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. 11 Co. 52.—(He who concedes anything is considered as conceding that without which his concession would be void, without which the thing itself could not exist.)

Qui contemnit præceptum, contemnit præcipientem. 12 Co. 96.—(He who contemns the precept, contemns the person giving it.)

Quicquid demonstratæ rei additur satis demonstratæ frustra est. D. 33, 4, 1, s. 8.—

(Whatever is added to demonstrate anything already sufficiently demonstrated, is surplusage.) See *Broom's Leg. Max.*, 6th ed., 584.

Quicquid plantatur solo, solo cedit. Off. of Exec. 47.—(Whatever is affixed to the soil, belongs to the soil.)

Quicquid solvitur, solvitur secundum modum solventis. 2 Vern. 606.—(Whatever is paid, is paid according to the direction of the payer); e.g., if a man owe 5*l.* to me, and 5*l.* to my wife for money lent to him by her when unmarried, if he repay me one sum of 5*l.* it is for him to say in discharge of which debt it shall go.

Qui cum alio contrahit, vel est, vel esse debet, non ignarus conditionis ejus.—(He who contracts with another, either is, or ought to be, acquainted with the condition of the person with whom he contracts.)

Quicunque jussu judicis aliquid fecerit non videtur dolo malo fecisse, quia parere necesse est. 10 Co. 71.—(Whoever does anything by the command of a judge, is not reckoned to have done it with an evil intent, because it is necessary to obey.)

Qui doit inheriter al père doit inheriter al fitz.—(He who would have been heir to the father, shall be heir to the son.)

Quid Juris clamat, a judicial writ issued out of the record of a fine, which remained with the *custos brevium* of the Common Pleas before it was engrossed; it lay for the grantee of a reversion or a remainder, when the particular tenant would not attorn.—*Reg. Jud.* 571; *Cowel.*

Quid pro quo (*what for what*), the mutual consideration and performance of both parties to a contract.—*Cowel.*

Quietare, to quit, acquit, discharge, or save harmless.

Quiete clamare, to quit claim, or renounce all pretensions of right and title.—*Bract.* l. 5.

Quiet enjoyment. A 'qualified covenant' for quiet enjoyment is usually expressly inserted in leases, and excludes the implied covenant which is far more extensive. For the implied covenant guarantees the lessee against any lawful entry whatever, whereas the express covenant, as usually worded, guarantees the lessee only against entry by the lessor or persons 'claiming by, from, or under him,' so that a lessor having no title to the demised premises may safely enter into the qualified covenant for quiet enjoyment, for an ejectment of the lessee by the real owner would not be an ejectment by a person claiming by the lessor, but *against* him.—*Woodfall L. & T.* 14th ed., c. 17, s. 8.

Quietus, freed or acquitted. A word made use of in the Exchequer in the discharge given to accountants to the Crown, e.g., a sheriff. As to the registration of a *quietus*, see 2 Vict. c. 11, s. 9.

Quietus reditus, a quit-rent.

Qui ex damnato coitu nascuntur inter liberos non computantur. Co. Litt. 8 a.—(Those who are born of an unlawful intercourse are not reckoned among the children.) *Broom's Leg. Max.*, 6th ed., 483.

Qui facit per alium, facit per se. Co. Litt. 258.—(He who acts through another, acts through himself.) *Broom's Leg. Max.*, 6th ed., 799.

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. 12 Co. 59.—(He who has the jurisdiction of loosening, has the jurisdiction of binding.)

Qui hæret in literâ, hæret in cortice. Co. Litt. 289.—(He who considers merely the letter of an instrument goes but skin-deep into its meaning.) *Broom's Leg. Max.*, 6th ed., 641.

Qui in jus dominiumve alteri succedit jure ejus uti debet. D. 50, 17, 177, pr.—He who succeeds to the right or property of another ought to be clothed with his right.) 'For instance,' it is said in *Broom's Leg. Max.*, 6th ed., 441, 'fee simple estates are subject, in the hands of the heir or devisee, to debts of all kinds contracted by the deceased.'

Qui in utero est pro jam nato habetur, quoties de ejus commodo quæritur.—(He who is in the womb is held as already born, whenever a question arises for his benefit.)

Qui jure suo utitur, nemini facit injuriam. Reg. Jur. Civ.—(He who exercises a right, does an injustice to nobody.)

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est. 10 Rep. 76.—(Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey.) See *Broom's Leg. Max.* 6th ed., 88.

Quilibet potest renunciare juri pro se introducto. 2 Inst. 183.—(Every man can renounce a right introduced for himself.)

Quillet, a quibble.

Qui non cadunt in constantem virum vani timores sunt æstimandi. 7 Co. 27.—(Those fears are to be esteemed vain which do not affect a firm man.)

Qui non habet in ære, luat in corpore; ne quid peccetur impunè. 2 Inst. 173.—(He who cannot pay with his purse must suffer in person, lest any one should sin with impunity.)

Qui non habet potestatem alienandi habet necessitatem retinendi. Hob. 336.—(He who has not the power of alienating, is obliged to retain.)

Qui non improbat, approbat. 3 Inst. 27. —(He who does not blame, approves.)

Qui non obstat quod obstare potest, facere videtur. 2 Inst. 146.—(He who does not prevent what he can prevent, seems to commit the thing.)

Qui non prohibet quod prohibere potest assentire videtur. 2 Inst. 308.—(He who does not forbid what he can forbid, appears to assent.)

Qui non propulsat injuriam quando potest, infert. Jenk. Cent. 271.—(He who does not repel an injury when he can, induces it.)

Quinquepartite, consisting of five parts.

Quinque Portus. See CINQUE PORTS.

Quinsteme, or **Quinzime,** fifteenths; also the fifteenth day after a festival.—13 *Edw. I.* See *Cowel.*

Quintal, or **Kintal,** a weight of 100 lbs.—*Cowel.*

Quinto exactus, the fifth or last call or requisition of a defendant sued to outlawry. See *Cowel,* voce '*Quint-exact.*'

Qui obstruit aditum, destruit commodum. Co. Litt. 161.—(He who obstructs an entry (on land), takes away the enjoyment.)

Qui omne dicit, nihil excludit. 4 Inst. 81. —(He who says all, excludes nothing.)

Qui parcit nocentibus, innocentes punit. Jenk. Cent. 133.—(He who spares the guilty punishes the innocent.)

Qui peccat ebrius, lua sobrius. Cary's Rep. 133.—(Let him who sins when drunk be punished when sober.)

Qui per alium facit, per seipsum facere videtur. Co. Litt. 258.—(He who does a thing by an agent, is considered as doing it himself.)

Qui per fraudem agit, frustá agit. 2 Rol. Rep. 17.—(What a man does fraudulently, he does in vain.)

Qui periculum amat in eo peribit.—(He who loves danger will perish by it.)

Qui potest et debet vetare, jubet. Gilb. 35. —(He who is able and ought to forbid, commands.)

Qui primum peccat ille facit rixam. Godb. —(He who sins first, makes the strife.)

Qui prior est tempore potior est jure.—Co. Litt. 14 a.—(He who is first in time is better in law.) *Broom's Leg. Max.,* 6th ed., 335.

Qui pro me aliquid facit, mihi fecisse videtur. 2 Inst. 501.—(He who does anything for me, appears to do it to me.)

Qui providet sibi providet hæredibus.—(He who provides for himself, provides for his heirs.)

Qui rationem in omnibus quærunt, rationem subvertunt. 2 Co. 75.—(They who seek a reason for everything, subvert reason.)

Qui semel actionem renunciaverit amplius repetere non potest. 8 Co. 59.—(He who renounces an action once, cannot any more repeat it.)

Qui sentit commodum, sentire debet et onus; et è contra. 1 Co. 99.—(He who receives the advantage, ought also to suffer the burthen; and the converse also holds.) *Broom's Leg. Max.,* 6th ed., 666.

Quisquis erit qui vult juris-consultus haberi continuet studium, velit a quocunque doceri. Jenk. Cent.—(Whoever wishes to be a jurisconsult, let him continually study, and desire to be taught by every one.)

Quisquis præsumitur bonus; et semper in dubiis pro reo respondendum. Jur. Civ.—(Every one is presumed good; and in doubtful cases the resolution shall be ever for the accused.)

Qui tacet, consentire videtur. Jenk. Cent. 32.—(He who is silent, appears to consent.)

Qui tacet consentire videtur, ubi tractatur de ejus commodo. 9 Mod. 38.—(He who is silent is considered as assenting when his advantage is debated.)

Qui tam (*who as well*), a popular action on a penal statute which is partly at the suit of the Qeeen, and partly at that of an informer; so called from the words '*Qui tam pro dominâ reginâ, quam pro se ipso, sequitur.*' As to the power of the Crown to remit these penalties, see 22 Vict. c. 32, and the Remission of Penalties Act, 1875.

Qui tardius solvit, minus solvit. Jenk. Cent. 58.—(He who pays slowly, pays too little.)

Qui timent, cavent et vitant. Office of Exec. 62.—(They who fear are wary and avoid.)

Quit claim, a quitting of one's action, claim, or title.

Quit rent (*quietus redditus*), a rent payable to a lord of a manor, so called because it was originally paid by the tenant in substitution of, and to free him from, military and other services. As no manor has been created since the statute *Quia emptores* (see MANOR; QUIA EMPTORES), every quit-rent must have become first payable at a date at least prior to that statute.

A quit-rent may be 'redeemed' by the owner of the land subject thereto, under s. 45 of the Conveyancing Act, 1881.

Quittance, an abbreviation of acquittance, a release (*q.v.*).

Qui vult decipi decipiatur.—(Let him be deceived who wishes to be deceived.) See 1 *De G. M. & G.* 687—710.

Quoad hoc (*as to this*).

Quo animo (*with what mind*).

Quod ab initio non valet, in tractu temporis non convalescet. 4 Co. 2.—(That which is bad in its commencement improves not by

lapse of time.) See *Broom's Leg. Max.*, 6th ed., 171.

Quod ædificatur in area legatâ cedit legato. Amos and Ferard on Fixtures, 3rd ed., 246.—(That which is built on the ground devised passes to the devisee.)

Quod alias bonum et justum est, si per vim, vel fraudum petatur, malum et injustum efficitur. 3 Co. 78.—(What otherwise is good and just, if it be sought by force and fraud becomes bad and unjust.)

Quod approbo non reprobo.—(That which I approve I do not reject.) In other words, if one take a benefit under a deed or will, he must perform any condition attached to it.

Quod à quoque pœnæ nomine exactum est id eidem restituere nemo cogitur. D. 50, 17, 46.—(No one is obliged to pay back what any one has been made to pay by way of penalty.)

Quod clerici beneficiati de cancellariâ, a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in Parliament, etc.—*Reg. Orig.* 261.

Quod clerici non eligantur in officio ballivi, etc., a writ which lay for a clerk, who, by reason of some land he had, was made, or was about to be made, bailiff, beadle, reeve, or some such officer, to obtain exemption from serving the office.—*Reg. Orig.* 187.

Quod constat clarè, non debet verificari.—(That which is clearly apparent needs not to be verified.)

Quod constat curiæ, opere testium non indiget. 2 Inst. 662.—(What is manifest to the Court needs not the help of witnesses.)

Quod contra legem fit, pro infecto habetur. 4 Co. 31.—(What is done contrary to law is considered as not done.)

Quod contra rationem juris receptum est, non est producendum ad consequentias. Grounds and Rudiments of the Law, Ed. 1751; D. 1. 3, 14.—(That which has been received against the reason of the law is not to be drawn into a precedent.)

Quod computet, an interlocutory judgment or decree in a matter of account. See now ACCOUNT.

Quod cum (*that whereas*).

Quodcunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur. 2 Inst. 590.—(Whatever any one does in defence of his person, that he is considered to have done legally.)

Quod datum est ecclesiæ, datum est Deo. 2 Inst. 2.—(What is given to the church is given to God.)

Quod demonstrandi causâ additur rei satis demonstratæ, frustra fit. 10 Co. 113.—(What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain.)

Quod dubitas ne feceris. Hale's P. C. 300.—(Refrain from doing that about which you are in doubt.)

Quod ei deforceat, a writ for a tenant-in-tail, tenant-in-dower, by the courtesy, or for term of life, having lost any land by default, against him who recovers, or his heir.—*Reg. Orig.* 171.

Quod fieri debet facile præsumitur. Halkerston, 153.—(That which ought to be done is easily presumed.)

Quod fieri non debet factum valet. 5 Co. 38.—(What ought not to be done is valid when done.) As to the cases in which this principle is applicable, see *Broom's Leg. Max.*, 6th ed., 175—289.

Quod initio vitiosum est non potest tractu temporis convalescere. D. 50, 17, 29.—(That which is void from the beginning cannot become valid by lapse of time.)

Quod in uno similium valet, valebit in altero. Co. Litt. 191.—(What avails in one of two similar things, will avail in the other.)

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest. Broom's Leg. Max., 6th ed., 434.—(That which is mine cannot be lost or transferred to another without any alienation or forfeiture.)

Quod non apparet non est; et non apparet judicialiter ante judicium. 2 Inst. 479.—(That which appears not, is not; and nothing appears judicially before judgment.)

Quod non habet principium non habet finem. Wing. Max. 79; Co. Litt. 345 a.—(That which has not beginning has not end.) For illustrations of this maxim see *Broom's Leg. Max.*, 5th ed., 180.

Quod non valet in principali, in accessorio seu consequenti, non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. 8 Co. 78.—(That which is not good against the principal, will not be good as to accessories or consequences; and that which is not of force in regard to things near it, will not be of force in regard to things remote from it.)

Quod nullius est, est domini regis. Fleta, l. iii.—(That which is the property of nobody belongs to our lord the king.)

Quod nullius est, id ratione naturali occupanti conceditur. Pand. 1, xli.—(What belongs to nobody is given to the occupant by natural right.)

Quod per me non possum, nec per alium. 4 Co. 24.—(What I cannot do of myself, I cannot do by another.)

Quod permittat, a writ which, before the absolution of real actions, lay against any person who erected a building, though on his own ground, so near to the house of another

that it hung over or became a nuisance to it. —*Termes de la Ley*, 479. Abolished. See *Roscoe on Real Actions*, p. 40.

Quod permittat prosternere, a writ, in the nature of a writ of right, to abate a nuisance. —*F. N. B.* 104. Abolished.

Quod per recordum probatum, non debet esse negatum.—(What is proved by record ought not to be denied.)

Quod persona nec prebendarii, etc., a writ which lay for spiritual persons, distrained in their spiritual possessions, for payment of a fifteenth with the rest of the parish.—*F. N. B.* 175. Obsolete.

Quod primum est intentione, ultimum est in operatione. Bacon.—(That which is first in intention is last in operation.)

Quod prius est verius est; et quod prius est tempore potius est jure. Co. Litt. 347.—(What is first is true; and what is first in time is better in law.)

Quod pro minore licitum est, et pro majore licitum est. 8 Co. 43.—(That which is lawful as to the minor is lawful as to the major.)

Quodque dissolvitur eodem modo quo ligatur. 2 Rol. Rep. 39.—(In the same manner that a thing is bound, in the same manner it is unbound.)

Quod recuperet [Lat.] (*that he do recover the debt or damages*), a final judgment for a plaintiff in a personal action.

Quod remedio destituitur ipsâ re valet si culpa absit. Bac. Max. Reg. 9.—(That which is without remedy avails of itself, if there be no fault in the party seeking to enforce it.) See *Broom's Leg. Max.*, 5th ed., 212.

Quod semel aut bis existit prætereunt legislatores. D. 1, 3, 6.—(The legislature takes no notice of that which is only of occasional occurrence.)

Quod semel meum est amplius meum esse non potest. Co. Litt. 49 b.—(What is once mine cannot be more fully mine.)

Quod semel placuit in electione, amplius displicere non potest. Co. Litt. 146.—(What choice is once made, it cannot be disapproved any longer.)

Quod sub certâ formâ concessum vel reservatum est, non trahitur ad valorem seu compensationem. Bacon.—(What is given or reserved under a certain form, is not to be drawn into a valuation or compensation.)

Quod subintelligitur non deest. 2 Ld. Raymond, 832.—(What is understood is not wanting.)

Quod tacite intelligitur deesse non videtur. 4 Co. 22.—(What is silently understood does not appear to be wanting.)

Quod vanum et inutile est, lex non requirit. Co. Litt. 319.—(The law requires not what is vain and useless.)

Quo jure, a writ which lay for him who had land wherein another challenged common of pasture, time out of mind; and it was to compel him to show by what title he challenged it.—*F. N. B.* 158.

Quo ligatur, eo dissolvitur. 2 Rol. Rep. 21. —(By the same mode by which a thing is bound, by that is it released.)

Quo minus, a writ which lay for him who had a grant of house-bote and hay-bote in another's woods against the grantor, making such waste as that the grantee could not enjoy his grant.—*O. N. B.* 148.

It also lay for the Queen's accountant in the Exchequer against any person against whom he had a right of action, and was called a *quo minus* because in it the plaintiff suggested that he was the king's farmer or debtor, and that the defendant had done him the injury or damage complained of, *quo minus sufficiens existit* (by which he is less able), to pay the king his debt or rent. Afterwards this suggestion of being debtor to the king was allowed to be inserted by any plaintiff who wished to proceed in that court against any defendant, as a mere matter of form, and in this way the Court of Exchequer obtained a jurisdiction co-extensive with that of the Common Pleas in actions personal. The writ of *quo minus* was abolished by 2 Wm. IV. c. 39.—3 *Bl. Com.* 46.

Quo modo quid constituitur, eodem modo dissolvitur. Jenk. Cent. 74.—(In the same manner by which anything is constituted, by that it is dissolved.)

Quoniam attachiamenta, one of the oldest books of the Scotch law so called from the first words of the volume. See *Erskine* l. 1, tit. 1, s. 36.

Quorum (*of whom*), the number of members of an administrative or judicial body whose presence is necessary for the acts of the body to be valid; e.g., of a County Licensing Committee, which consists of not more than 12 members, the quorum is 3 members.—*Licensing Act*, 1872, s. 37. The term is derived from the 'justices of the quorum.' See JUSTICES.

Quorum prætextu, nec auget nec minuit sententiam, sed tantum confirmat præmissa. Plow. 52.—('*Quorum prætextu*' neither increases nor diminishes a sentence, but only confirms that which went before.)

Quot, one-twentieth part of the movable estate of a person dying in Scotland, anciently due to the bishop of the diocese wherein he had resided.

Quota, a tax to be levied in an equal manner.—*Cowel.*

Quotiens idem sermo duas sententias exprimit; ea potissimum excipiatur, quæ rei

generandæ opitor est. D. 50, 17, 67.—(Whenever the same speech expresses two meanings, that ought to be given most weight to which is the fitter for effecting the purpose.)

Quoties duplici jure defertur alicui successio, repudiato novo jure, quod ante defertur supererit vetus. Reg. Jur. Civ.—(Whenever a succession comes to a man by a double right, the new right being laid aside, the old one which brought it first will survive.)

Quoties in stipulationibus ambigua oratio est commodissimum est id accipi quo res de quâ agitur in tuto sit. D. 41, 1, 80; D. 50, 16, 219.—(Whenever the expression is doubtful in contracts, it is most advantageous that that meaning be accepted by which the safety of the subject-matter may be assured.)

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est. Co. Litt. 147.—(When in the words there is no ambiguity, then no exposition contrary to words is to be made.)

Quo warranto, a writ issuable out of the Queen's Bench Division of the High Court of Justice, in the nature of a writ of right for the Crown against him who claims or usurps any office, franchise, or liberty, to inquire *by what authority* he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it, whereby it is forfeited.

This proceeding was, until 1872, the one generally adopted for the purpose of trying the right to *be elected to* municipal offices, but the Corrupt Practices (Municipal Elections) Act, 1872, 35 & 36 Vict. c. 60, by s. 12, replaced by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 87, substituted an 'election petition' in the cases where an election is sought to be questioned on the ground of bribery, etc., disqualification, or undue return. Where *quo warranto* still lies, as in cases where a corporate officer becomes disqualified *after election*, it must, by s. 225 of the Act of 1882, replacing 7 Wm. IV. and 1 Vict. c. 78, and 6 & 7 Vict. c. 89, be applied for within twelve months after the corporate officer became disqualified for the municipal office, and after at least ten days' notice to the party affected. See also Crown Office Rules, 1886, rr. 51—3.

As to procedure on *quo warranto* generally, see Crown Office Rules, 1886, rr. 54—9.

If the defendant be adjudged guilty of an intrusion or usurpation, the Court may give judgment of *ouster* against him, fine him, and order him to pay costs to the relator.—9 *Anne* c. 20, s. 5; and see *Com. Dig.*, tit. '*Quo Warranto*'; *Shortt's Crown Office Rules; Croner's Crown Practice;* 3 *Br. & Had. Com.* 389 *et seq.*

Quum principalis causa non consistit ne ea quidem quæ sequuntur locum habent. D. 50, 17, 129, s. Ir.)—When the principal does not hold, the incidents thereof ought not to obtain.)

Quum quod ago non valet ut ago, valeat quantum valere potest. 1 Vent. 216.—(When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can.)

Q. V. (*quod vide*), used to refer a reader to the word, chapter, etc., the name of which it immediately follows.)

R.

Rabbit, a beast of warren, also termed a cony. As to the right of a tenant to shoot rabbits on his farm, although the right of sporting is reserved to the landlord, see *Spicer* v. *Barnard*, 1 *E. & E.* 874, and Ground Game Act, 1880, *ante*, title HARE.

Rabies Order, 1886. An order of the Privy Council under s. 8 of the Contagious Diseases (Animals) Act, 1886, made 16th September, 1886, whereby dogs were brought within the scope of the Contagious Diseases (Animals) Acts, and various provisions are made for preventing the spread of rabies or hydrophobia by the operation of the Contagious Diseases (Animals) Act, 1878, and by empowering local authorities to make regulations for muzzling, seizing unmuzzled dogs, etc. For the order at length, see *Chit. Stat. for* 1886, p. 9. By the Board of Agriculture Act 1887, the powers of the Privy Council to make orders under the Act of 1886 were transferred to the Board of Agriculture.

Racecourse. By the Racecourse Licensing Act, 1879, 42 & 43 Vict. c. 18, no metropolitan surburban racecourse (i.e., no racecourse within ten miles of Charing Cross) is allowed without an annual license from the justices of the peace, which may be granted at any Michaelmas Quarter Sessions.

Rachetum [fr. *redimo*, Lat.], a compensation or redemption of a thief.—*Cowel.*

Rack, an engine of torture.

It was occasionally used for the purpose of state; but in judicial proceedings only once in the reign of Queen Elizabeth; its last infliction is said to have been in 1640. When, upon the assassination of Villiers, Duke of Buckingham, by Felton, it was proposed in the Privy Council to put the assassin to the rack, to discover his accomplices, the judges declared, to the honour of the law, that no such proceeding was allowable.

Rack-rent, rent raised to the uttermost; the full annual value of the property. 2 *Br. & Had. Com.* 54.

Rack-vintage, wines drawn from the lees. —*Cowel.*

Radoub [Fr.], the repairs made to a ship, and a fresh supply of furniture and victuals, munitions, and other provisions, required for a voyage.—*Mer. Law.*

Rageman [fr. *regimen*, Lat.], a rule, form, or precedent.

Ragged Schools are exempted from poor and other rates by 32 & 33 Vict. c. 40. s. 1.

Raglorious, a steward.—*Seld. Tit. of Hon.* 597.

Ragman's-roll, or **Ragimund's-roll**, a roll, called from one Ragimund, or *Ragimont*, a legate in Scotland, who, summoning all the beneficed clergymen in that kingdom, caused them on oath to give in the true value of their benefices, according to which they were afterwards taxed by the Court of Rome.

Railway. A road owned by a private person or public company on which carriages run over iron rails; if the road is a public highway, that part of it on which the rails are laid is called a tramway. Every railway in this country (except a few private railways running through land owned by the owner of the railway) is constructed and managed (1) under a local and personal Act of Parliament; *and* (2) under the Companies Clauses, Lands Clauses, and Railways Clauses Consolidation Acts; *and* (3) under the general Acts relating to railways. The powers of railway companies as carriers are given by the 86th section of the Railway Clauses Consolidation Act, 1845, 8 Vict. c. 20, and controlled by the Railway and Canal Traffic Acts of 1854, 1873, and 1888. As to their power to make byelaws, see 8 & 9 Vict. c. 20, ss. 108—11, and 144 *et seq.* As to their duty to provide cheap trains, see the Cheap Trains Act, 1883, replacing 7 & 8 Vict. c. 85; ss. 6, 7, and their amending Acts. The powers of railway companies to charge for conveyance and carriage are specified in the various toll clauses of their special Acts, which are very imperfect. So far as 'merchandise traffic,' i.e., the traffic in goods and animals, is concerned, the 24th section of the Railway and Canal Traffic Act, 1888, obliges all the companies to submit to the Board of Trade a 'revised classification of the traffic, and a revised schedule of maximum rates and charges applicable thereto,' with the view of their eventual embodiment in Acts of Parliament. And in 1891 nine such Acts, as for instance the London and North Western Railway (Rates and Charges) Order Confirmation Act, 1891, 54 & 55 Vict. c. ccxxxi, received the Royal Assent, but they do not come into operation until the 1st August, 1892, or such later date as the Board of Trade may direct. See also succeeding titles, and *Shelford*, or *Hodges*, or *Browne and Theobald*, or *Godefroi and Shortt* on *Railways*, and *Chitty's Statutes*, vol. v., tit. '*Railways.*'

Railway and Canal Commission, a body established by the Railway and Canal Traffic Act, 1888, 51 & 52 Vict. c. 25, to supersede the Railway Commissioners, and exercise their jurisdiction with enlarged powers, and consisting of two appointed (one to be of experience in railway business) and three *ex-officio* commissioners: one for England, one for Scotland, and one for Ireland, being each of them a Judge of a Superior Court in England, Scotland, or Ireland respectively, and not required to attend out of the part of the United Kingdom for which he is appointed. The *ex-officio* commissioner presides at the sittings, and his opinion upon any question of law prevails. As to appeal to '*superior* Court of Appeal,' see ss. 17 and 55 of the Act of 1888.

Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, an Act by ss. 2 and 3 of which the Courts of Common Pleas in England and Ireland and the Court of Session in Scotland were empowered to compel railway and canal companies (1) to grant reasonable facilities for the receiving, forwarding, and delivering their own traffic; (2) to abstain from giving an undue preference to any particular person or traffic; and (3) to forward traffic without delay in cases of continuous communication. The object of the Act, which was amended in 1873 and 1888, was to ensure freedom and economy of transit from one end of the kingdom to the other. See RAILWAY AND CANAL COMMISSION; RAILWAY COMMISSIONERS.

Railway Clearing System. See 13 & 14 Vict. c. 33.

Railway Commissioners. By the regulations of Railways Act, 1873, 36 & 37 Vict. c. 48, provision was made for the appointment of three Commissioners (one to be of experience in the law, and another in railway business), to whom was transferred all the jurisdiction conferred by s. 3 of the Railway and Canal Traffic Act, 1854 (see *supra*), on the several courts and judges empowered to hear and determine complaints under that Act. The Act of 1873, which was at first limited to continue for five years only, was continued in 1878, and afterwards until it was made perpetual, with amendments, by the Railway and Canal Traffic Act, 1888.

Railway Companies Arbitration Act, 22 & 23 Vict. c. 59, amended by 25 & 26 Vict. c. 89, ss. 72, 73.

Railway Companies Mortgage Transfer (Scotland) Act, 1861, 24 & 25 Vict. c. 50.

Railway Passengers Assurance Company, 12 & 13 Vict. c. 40; 15 & 16 Vict. c. 100; and 38 & 39 Vict. c. 49.

Railway passengers, Endangering, punishable under 24 & 25 Vict. c. 100, ss. 32—4, and 24 & 25 Vict. c. 97, ss. 35—8.

Railway Rolling Stock Protection. See 35 & 36 Vict. c. 50, which protects from distress by a landlord rolling stock not being the property of the tenant. See also The Railway Companies' Act, 1867 (30 & 31 Vict. c. 127), s. 4, and the Railway Companies (Scotland) Act, 1867 (30 & 31 Vict. c. 126), s. 4, continued by 31 & 32 Vict. c. 71, and made perpetual by 38 & 39 Vict. c. 31, which protect all rolling stock from execution.

Railway Securities Act, 1866, 29 & 30 Vict. c. 108, enacted shortly after the 'Redpath Frauds' for the greater protection of persons lending money to railway companies upon debentures, etc. Its principal provision is that each loan shall be specifically certified by an accountable officer to be within the borrowing powers of the Company.

Railways Clauses Consolidation Act, 1845, 8 Vict. c. 20, and Railways Clauses Act, 1863, 26 & 27 Vict. c. 92. These Acts contain general provisions as to the construction and management of railways, and were passed for the purposes of (1) avoiding the necessity of repeating such provisions in the special Acts by which each railway company is incorporated; and (2) securing uniformity in the provisions themselves. The Act of 1845 applies to all companies incorporated after its passing, except as expressly excepted by any special Act; the Act of 1863 applies only if expressly incorporated in a special Act.

Ran, open or public theft.—*Cowel.*

Ranger, a sworn officer of the forest and parks. His office consists chiefly in three points: to walk daily through his charge, and see, hear, and inquire of trespasses in his bailiwick; to drive the beasts of the forest, both of venery and chase, out of the disafforested into the forested lands; and to present all trespasses of the forest at the next court holden for the forest.—*Manw.*

Ranges Act, 1891, 54 & 55 Vict. c. 54, facilitates the acquisition of Ranges by or for volunteer corps.

Rank Modus, one that is too large. Rankness is a mere rule of evidence, drawn from the improbability of the fact, rather than a rule of law.—2 *Steph. Com.*, 7th ed., 729. See MODUS DECIMANDI.

Ranking of Creditors, the arrangement of the property of a debtor, according to the claims of the creditors and the nature of their respective securities.—*Scotch phrase.*

Ransom [fr. *rancon*, Fr.], a price of redemption of a captive or prisoner of war, or for the pardon of some great offence. It differs from amerciament, because it excuses from corporal punishment.—*Cowel.*

Rape, a division of a county, especially Sussex, similar to that of a hundred, but oftentimes containing in it more hundreds than one. It was originally a military government.—*Cowel.*

Rape, the carnal knowledge of a woman by force against her will, for the legal establishment of which crime proof of penetration only is required (24 & 25 Vict. c. 100, s. 63, replacing 9 Geo. IV. c. 31, s. 18), for a long period was punished as a capital crime in this country; but penal servitude was substituted by 24 & 25 Vict. c. 100, s. 48, which provides that 'Whosoever shall be convicted of the crime of rape shall be guilty of felony, and be liable to be kept in penal servitude for life, or any term not less than three [since altered to *five*] years, or to be imprisoned for any term not exceeding two years, with or without hard labour.' See also the Criminal Law Amendment Act, 1885.

Rape of the Forest, trespass committed in the forest by violence.—*Cowel.*

Rape-reeve, an officer who used to act in subordination to the shire-reeve.

Rapine [fr. *rapina*, Lat.], the taking a thing against the owner's will, openly or by violence; robbery. See LARCENY.

Raptu hæredis, a writ for taking away an heir holding in socage; of which there were two sorts, one when the heir was married, the other when he was not.—*Reg. Orig.* 163.

Rastell. Among the ancient law-writers of the reign of Henry VIII. are to be reckoned John Rastell, the printer and lawyer, and his son William Rastell, the lawyer and printer. John Rastell translated from the French the 'Abridgment of the Statutes prior to the time of Henry VII.' He also abridged those of Henry VII., and down to the 23rd and 24th of Henry VIII., which were printed together by the son William, in 1533. This was the first abridgment in the English language.

The performances which most distinguish William Rastell belong to a later period than the reign of Henry VIII. These are his collection of English statutes printed in 1559, and his 'Entries,' printed long after his death in 1596.—4 *Reeves*, 418.

Rasure, or **Erasure,** the act of scraping or shaving.

Rasure of a deed, so as to alter it in a material part, without consent of the party bound by it, etc., will make the same void, and if it be rased in the date after delivery, it is said it goes through the whole. Where a deed by rasure, addition, or alteration becomes no deed, the defendant may plead *non est factum.*—5 *Rep.* 23.

A rasure or interlineation in a *deed* is presumed, in the absence of rebutting evidence, to have been made at or before its execution, but in a *will* it is presumed to have been made after its execution. See INTERLINEATION.

Rate. A charge made by a railway, water, gas, or other public company for services rendered (see, e.g., the 86th section of the Railways Clauses Consolidation Act, 1845); a contribution levied by some public body for a public purpose, as a poor rate, a highway rate, a sewers' rate, upon, as a general rule, the occupiers of property within a parish or other area.

The poor rate is levied under 43 Eliz. s. 2 on the occupiers in each parish of 'lands, houses, tithes, coal mines, or salable underwoods,' and 'The Rating Act, 1874' (37 & 38 Vict. c. 54), extends the liability to rates to: (1) land used for a plantation or a wood, or for the growth of salable underwood, and not subject to any right of common; (2) rights of fowling, shooting, taking, or killing game, or rabbits, and of fishing when severed from the occupation of the land; and (3) mines of every kind (e.g., iron mines) not mentioned in the Act of Elizabeth.

As between landlord and tenant rates are ordinarily paid by the tenant, but the rating of the landlord instead of the tenant is provided for by the Poor Rate Assessment and Collection Act, 1869, 32 & 33 Vict. c. 41, in cases where the ratable value does not exceed 20*l.* in the Metropolis, or 13*l.* in Liverpool, or 10*l.* in Birmingham or Manchester, or 8*l.* elsewhere, if the vestry of the parish so order. The payment of poor-rates is a condition precedent to the exercise of the parliamentary, municipal, and county franchise under the Local Government Act. Personal property is not rateable, and stock in trade is expressly excepted by the still temporary, but long-continued, 3 & 4 Vict. c. 89. The Parochial Assessment Act, 1836, 6 & 7 Wm. IV. c. 96, provides a form of rate, and the Union Assessment Committee Acts of 1862 and 1864 provide for the making by an assessment committee of the Board of Guardians of every poor law union upon the returns furnished by the overseers of each parish, of 'valuation lists' showing the ratable values, etc. For these and other Acts, see *Chitty's Statutes*, vol. v., tit. '*Poor* (*Rating*).'

Rate-tithe, when any sheep, or other cattle, are kept in a parish for less time than a year, the owner must pay tithe for them *pro ratâ*, according to the custom of the place.—*F. N. B.* 51.

Ratification, confirmation. As to the ratification of contracts by infants, see the 'Infant's Relief Act, 1874,' and INFANT.

Ratihabitio, confirmation, agreement, consent, approbation of a contract.

Ratihabitio mandato æquiparatur.—(Ratification is tantamount to a direction.)

Ratihabitio mandato comparatur. Broom's Leg. Max., 6th ed., 822.—(Ratification is equivalent to command.)

Ratio, an account, a rule of proportion; also, a cause, or giving judgment therein.

Ratio decidendi, the point in a case which determines the judgment.

Ratio est formalis causa consuetudinis. (Reason is the formal cause of custom.)

Ratio est legis anima; mutatâ legis ratione mutatur et lex. 7 Co. 7.—(Reason is the soul of law; the reason of law being changed, the law is also changed.)

Ratio et auctoritas duo clarissima mundi lumina. 4 Inst. 320.—(Reason and authority, the two brightest lights of the world.)

Ratio legis est anima legis. Jenk. Cent. 45. —(The reason of law is the soul of law.)

Ratio potest allegari deficiente lege. Sed ratio vera et legalis, et non apparens. Co. Litt. 191.—(Reason may be alleged when law is defective. But it must be true and legal reason, and not merely apparent.)

Rationabile estoverium, alimony.

Rationabilibus divisis, an abolished writ, which lay where two lords, in divers towns, had seigniories adjoining, for him who found his waste by little and little to have been encroached upon, against the other, who had encroached, thereby to rectify their bounds. —*Cowel.*

Rationabili parte, an old writ of right for lands, etc.

Rationabili parte bonorum, a writ which lay for a wife after her husband's death, against the executors of the husband, for her third or 'reasonable part' of his goods, after debts and funeral charges paid.—*F. N. B.* 122; 2 *Br. & Had. Com.*, 634.

Rationabilis dos, a widow's third, or reasonable dower.

Rationes [M. Lat.], the pleadings in a suit. *Rationes exercere*, or *ad rationes stare*, to plead.

Ravishment, forcible violation. See ABDUCTION and RAPE.

Ravishment de Gard (*ravishment of ward*), an abolished writ which lay for a guardian by knight's service or in socage, against a

person who took from him the body of his ward.—*F. N. B.* 140; 12 *Car. II.* c. 3.

Re-afforested, where a de-afforested forest is again made a forest.—20 *Car. II.* c. 3.

Reader, a lecturer. 2. The chaplain of the Temple Church.

Reading-in. The title of a person admitted to a rectory or other benefice will be divested unless within two months after actual possession he publicly read in the church of the benefice, upon some Lord's-day, and at the appointed times, the Morning and Evening Service, according to the Book of Common Prayer; and afterwards, publicly before the congregation, declare his assent to such book; and also publicly read the Thirty-nine Articles in the same church, in the time of common prayer, with declaration of his assent thereto; and, moreover, within three months after his admission, read upon some Lord's-day in the same church, in the presence of the congregation, in the time of divine service, a declaration, by him subscribed before the ordinary, of conformity to the Liturgy, together with the certificate of the ordinary of its having been so subscribed.—2 *Steph. Com.*

Real action, one brought for the specific recovery of lands, tenements, and hereditaments.

Among the civilians, real actions, otherwise called *vindications*, are those in which a man demanded something that was his own. They were founded on dominion, or *jus in re.*

The real actions of the Roman law were not like the real actions of the common law, confined to real estate, but they included personal as well as real property. But the same distinction as to classes of remedies and actions pervades the common and civil law. Thus we have, in the common law, the distinct classes of real actions, personal actions, and mixed actions. The first, embracing those which concern real estate where the proceeding is purely *in rem*; the next, embracing all suits *in personam* for contracts and torts; and the last embracing those mixed suits where the person is liable by reason of and in connection with property.—*Story's Confl. Laws*, 781.

By the 3 & 4 Wm. IV. c. 27, s. 37, all real and mixed actions, except writ of right of dower, or writ of dower *unde nihil habet, quare impedit*, and ejectment, were abolished. By the C. L. P. Act, 1860, s. 26, the procedure in the excepted actions of dower, etc., except ejectment, was assimilated to that of ordinary actions, and by the Rules of Court under the Jud. Act, all remaining distinction between ejectment and other actions is abolished.

Real burden. Where a right to lands is expressly granted under the burden of a specific sum, which is declared a burden on the lands themselves, or where the right is declared null if the sum be not paid, and where the amount of the sum, and the name of the creditor in it can be discovered from the records, the burden is said to be real.—*Bell's Scotch Law Dict.*

Real chattels. See CHATTELS.

Real estate, land (with all houses, etc., built thereon) including all estates and interests in lands which are held for life (*not* for years, however many) or for some greater estate, and whether such lands be of freehold or copyhold tenure. This subject is treated of under various heads. Reference may, however, be made here to only a few of the more important statutes on this subject, viz., the 8 & 9 Vict. c. 106; the 'Vendor and Purchaser Act, 1874,' 37 & 38 Vict. c. 78, by which last-mentioned Act forty years is substituted for sixty years as the root of title; the Conveyancing Acts, 1881 and 1882, and the Settled Land Act, 1882. Consult *Shelford's Real Property Acts; Williams on Real Property.*

Reality. See PERSONALITY OF LAWS.

Real laws. Laws purely real directly and indirectly regulate property, and the rights of property, without intermeddling with or changing the state of the person.

In regard to laws purely real, Boullenois lays down the rule in the broadest terms, that they govern all real property within the territory, but have no extension beyond it. *Les lois réelles n'ont point d'extension directe ni indirecte hors la jurisdiction et la domination du législateur.—Story's Confl. Laws*, s. 426.

Real property, real estate, which see.

Real right, the right of property, *jus in re.* The person having such right may sue for the subject itself. A personal right, *jus ad rem*, entitles the party only to an action for performance of the obligation.

Real things, things substantial and immovable, and the rights and profits annexed to or issuing out of them.—1 *Steph. Com.*

Real warrandice, an infeoffment of one tenement given in security of another.—*Scotch Law.*

Realm, a kingdom or country.

Realty, real estate, which see.

Reason, the very life of law, for when the reason of law once ceases the law itself generally ceases, because reason is the foundation of all our laws.—*Co. Litt.* 17.

Reasonable. If there be a contract to do a thing, or to buy goods, and no time or price is mentioned, the law implies that the thing was to be done in a reasonable time,

or that a reasonable price was to be paid, and what is reasonable is a question of fact, not law.

Reasonable aid, a duty claimed by the lord of the fee of his tenants holding by knight service, to marry his daughter, etc.—*Cowel.*

Reasonable and probable cause, such grounds as justify any one in suspecting another of a crime and giving him in custody thereon. It is a defence to an action for false imprisonment. Whether there be reasonable and probable cause is a question of law, not fact. See *Addison on Torts.*

Reasonable part. See RATIONIBILI PARTE.

Re-assurance, a contract that a first insurer enters into to release himself from a risk which he has incautiously undertaken by throwing it upon some other insurer. Such contracts are prohibited by 9 Geo. II. c. 37, s. 4, except in the event of the original insurer's insolvency, bankruptcy, or death, when a re-assurance may lawfully be made by himself or his representatives or assigns, provided the transactions be declared by the policy to be of that description. Re-assurance is not to be confounded with double insurance, which see.—2 *Selw. N. P.* 1023.

Re-attachment, a second attachment of him who was formerly attached and dismissed the court without a day being fixed by the not coming of the justices, or some such casualty. —*Reg. Orig.* 35.

Rebate, discount; reducing the interest of money in consideration of prompt payment.

Rebellion, the taking up of arms traitorously against the Crown, whether by natural subjects or others when once subdued; 2. Disobedience to the process of the Courts.

Rebellion, Commission of, one of the abolished processes of contempt in the High Court of Chancery.—*Consol. Ord.* 1860, xxx., r. 5.

Rebellious assembly, a gathering of twelve persons or more, intending, going about, or practising unlawfully and of their own authority, to change any laws of the realm; or to destroy the enclosure of any park or ground enclosed, banks of fish-ponds, pools, conduits, etc., to the intent the same shall remain void, or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coneys in any warren, dove-houses, etc.; or to burn stacks of corn; or to abate rents, or prices of victuals, etc. See *Cowel.*

Rebouter, to repel or bar.

Rebus sic stantibus, at this point of affairs.

Rebut, to bar, reply, or contradict.

Rebutter [fr. *repello,* Lat., to put back or bar], the answer of a defendant to a plaintiff's sur-rejoinder. See REJOINDER.

Rebutting evidence, that which is given by one party in a cause, to explain, repel, counteract, or disprove evidence produced by the other party.

Recall, to supersede a minister, or deprive him of his office; also to revoke a judgment on a matter of fact.

Recaption, the taking a second distress of one formerly distrained, during the plea grounded on the former distress. It is a writ to recover damages for him whose goods, being distrained for rent in service, etc., are distrained again for the same cause, pending the plea in the County Court or before the justices.—*F. N. B.* 71.

It is also a species of remedy by the mere act of the party injured. This happens when any one has deprived another of his property, in goods or chattels personal, or wrongfully detains one's wife, child, or servant, in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace, and so that he favour not the thief.

Recapture, the recovery by force of a prize captured by an enemy.

Receditur à placitis juris potius quam injuriæ et delicta maneant impunita. Bacon.—(We surrender the forms of law rather than allow injuries to remain unpunished.)

Receipt, or **Receit,** an acknowledgment in writing of having received a sum of money or other valuable consideration: it is a voucher either of an obligation or debt discharged, or of one incurred.

By 16 & 17 Vict. c. 59, a penny stamp duty was imposed on a receipt or discharge given for or upon the payment of money amounting to two pounds or upwards. This Act is repealed by the 33 & 34 Vict. c. 99, but the duty is re-imposed by the Stamp Act, 1870, 33 & 34 Vict. c. 97, which exempts from duty bankers' deposit receipts and other receipts, as to which see the Schedule, *voce,* 'Receipt.' Section 123 of the Act provides that if any person gives any receipt liable to duty, and not duly stamped, *or* refuses to give a receipt duly stamped, in any case where a receipt would be liable to duty, *or* upon a payment to the amount of 2*l.* or upwards, gives a receipt for a sum not amounting to 2*l.*, or separates or divides the amount paid with intent to evade the duty, 'he shall forfeit the sum of 10*l.*' As to forgery of receipts, see 24 & 25 Vict. c. 98, s. 23.

Receiptor. A person to whom property is bailed by an officer, who has attached it upon mesne process, to answer to the exigency of the writ, and satisfy the judgment, the under-

standing being to have it forthcoming on demand. See *Story on Bailments*, 145.

Receiver, one to whom anything is communicated by another. An officer of the Court of Chancery to collect rents, etc., pending a suit. Receivers are appointed in suits concerning estates of infants, against executors, and between partners for winding-up business. Section 19 of the Conveyancing, etc., Act, 1881, gives, in the case of a mortgage executed *on or after* the 1st January, 1882, power to the mortgagee, in like manner as if it had been in terms conferred by the mortgage deed, 'when the mortgage money has become due to appoint a receiver of the income of the mortgaged property, or of any part thereof,' but such power cannot, by s. 24, be exercised until the mortgagee is entitled to exercise the power of sale under the Act (i.e., by s. 20, unless default has been made in payment of the principal, after notice, *or* interest is in arrear for two months, *or* there has been other default on the part of the mortgagor); and s. 24 also regulates in detail the powers and remuneration, etc., and duties of the receiver. A practising barrister may be a receiver; a solicitor in the cause cannot, unless by consent, and without salary; nor next friends of infant-plaintiffs; nor trustees. The allowance to the receiver depends on the difficulty of collection, being usually 5*l.* per cent. on the gross rental.

A receiver may be appointed by an interlocutory order of the Court, in all cases in which it shall appear to the Court to be 'just or convenient' that such order should be made (Jud. Act, 1873, s. 25 (8)).

Under the Bankruptcy Act, 1883, a receiver of a debtor's estate and business may be appointed by the Bankruptcy Court after the presentation of a bankruptcy petition.

Receiver of the Fines, an officer who received the money of all such as compounded with the Crown on original writs sued out of Chancery.

Receiver-General of the Duchy of Lancaster, an officer of the Duchy Court, who collects all the revenues, fines, forfeitures, and assessments within the duchy.

Receiver-General of the Public Revenue, an officer appointed in every county to receive the taxes granted by Parliament, and remit the money to the Treasury.

Receiver of stolen property. Punishable under 24 & 25 Vict. c. 96, ss. 91—7; s. 91 enacting that 'Whoever shall receive any chattel, money, valuable security, or other property, the stealing, taking, *extorting, obtaining, embezzling, or otherwise disposing whereof*, shall amount to a felony at Common Law, or by this Act, knowing the same to have been stolen, etc., is guilty of felony, and may be kept in penal servitude for any term between fourteen and three [this was altered to *five* by the Penal Servitude Act, 1864, but altered back to *three* by the Penal Servitude Act, 1891] years, or be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.'

By 34 & 35 Vict. c. 112 (repealing 31 & 32 Vict. c. 99), it is provided (s. 19) that, 'where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months; and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen, which forms the subject of the proceedings taken against him'; and further, that evidence of a previous conviction of 'any offence involving fraud or dishonesty' within five years preceding may be given at any stage of his trial.

Receiver under Mortgage Debenture Act, 1865. See 28 & 29 Vict. c. 78, ss. 41—7.

Receiver under Probate Act. See 20 & 21 Vict. c. 77, ss. 71—2; and 21 & 22 Vict. c. 95, s. 21.

Receiver under Trustees' and Mortgagees' Powers Act. See 23 & 24 Vict. c. 145, ss. 17—24.

Receivers of Wreck, or **Droit**, officers appointed by the Board of Trade, pursuant to 17 & 18 Vict. c. 104, ss. 439—57, for the preservation of wreck, etc. The Act provides for their duties and powers.

Receptus, an arbitrator.—*Civ. Law.*

Recession, a re-grant.

Récidive [Fr.], a relapse; the commission of a second offence.

Reciprocity, mutuality. In regard to foreign ships, see 16 & 17 Vict. c. 137, ss. 324—331; 18 & 19 Vict. c. 96, s. 15; and 24 & 25 Vict. c. 47.

Recital, the rehearsal or making mention in a deed or writing of something which has been done before.—1 *Lill. Abr.* 416. See DEED.

Reclaimed animals, those that are made tame by art, industry, or education, whereby a qualified property may be acquired in them. See FERÆ NATURÆ, and 2 *Steph. Com.*

Reclaiming, the action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place without his permission. Also the demanding of a thing or

person to be delivered up or surrendered to the prince or state it properly belongs to, when by an irregular means it has come into the possession of another.

Reclaiming Petition, a petition of appeal to the Inner House from the judgment of any Lord Ordinary in the Court of Session in Scotland.

Recognition, an acknowledgment.

Recognitione adnullandâ per vim et duritiem factâ, a writ to the justices of the Common Bench for sending a record touching a recognizance, which the recognizor suggests was acknowledged by force and duress; that if it so appear, the recognizance may be annulled.—*Reg. Orig.* 183.

Recognitors, the jury impannelled in an assize; so called because they acknowledged a disseisin by their verdict.—*Bract.* l. 5.

Recognizance, an acknowledgment of a debt owing to the Crown, with a condition to be void if the recognizor shall do some particular act, as if he, or the party for whom he is surety, shall appear at the assizes to prosecute a person, or to come up for judgment when called upon, or shall prosecute an appeal. See, e.g., Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 31, sub. 3; and for forms of recognizance, see the schedule to the Summary Jurisdiction Rules, 1886.

Recognizee, he to whom one is bound in a recognizance.

Recognizor, he who enters into a recognizance.

Récolement [Fr.], re-examination.

Recommendation to Mercy. See MERCY.

Re-compensation. Where a party sues for a debt, and the defendant pleads compensation, i.e., set-off, the plaintiff may allege a compensation on his part, and this is called a re-compensation.—*Scotch Law Term.*

Reconduction, a relocation, a renewal of a lease.—*Civ. Law.*

Reconvention, an action by a defendant against a plaintiff in a former action; a cross-bill or litigation.—*Ibid.*

Record, a memorial or remembrance; an authentic testimony in writing contained in rolls of parchment, and preserved in a court of record. The public records of the kingdom are placed under the superintendence of the Master of the Rolls, and a Record Office established by 1 & 2 Vict. c. 94.

There are three kinds of records, viz.: (1) *judicial*, as an attainder; (2) *ministerial*, on oath, being an office or inquisition found; (3) by way of *conveyance*, as a deed enrolled.

Record, Conveyances by, extraordinary assurances, as private Acts of Parliament, and royal grants.

Record, Courts of, those whose judicial acts and proceedings are enrolled in parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question. Every court of record has authority to fine and imprison for contempt of its authority.—3 *Br. & Had. Com.* 21, 30.

Record, Debts of, those which appear to be due by the evidence of a court of record, such as a judgment, recognizance, etc.—2 *Br. & Had. Com.* 655. Since 1st January, 1870, all specialty and simple contract debts of deceased persons stand in equal degree in the administration of the estate of any one deceased (32 & 33 Vict. c. 46).

Record of Nisi Prius, a transcript of the pleadings and issue was formerly made on parchment for the use of the Court on the trial of the action. Now, by R. S. C. 1883, Ord. XXXVI., r. 17, the party entering the action for trial must deliver to the officer two copies of the whole of the pleadings in the action, one of which is for the use of the judge at the trial. Such copies must be in print, except as to such parts, if any, of the pleadings, as are by the Rules permitted to be written.

Record, Trial by. If a record be asserted on one side to exist, and the opposite party deny its existence, thus, 'that there is no such record remaining in court as alleged,' and issue be joined thereon, this is an issue of *nul tiel* record; and the Court awards a trial by inspection of the record. Upon this, the party affirming its existence is bound to produce it in court on a given day; failing to do so, judgment is given for his adversary. The trial by record is the only legitimate mode of trying such issue.—*Steph. Plead.*; 2 *Chit. Arch. Prac.*

Record and Writ Clerks, three officers of the Court of Chancery, appointed by 5 & 6 Vict. c. 103. As to their duties, see that Act and also 15 & 16 Vict. c. 87, s. 46; 18 & 19 Vict. c. 124, s. 11; *Consol. Ord.* 1860, 1, rr. 35—53; and *Dan. Ch. Pr.* They were attached to the Supreme Court by s. 77 of the Jud. Act, 1873, and made 'masters' thereof by s. 8 of the Jud. (Officers) Act, 1879.

Record of Titles (Ireland), 28 & 29 Vict. c. 88, amended by 29 & 30 Vict. c. 99. See LANDED ESTATES COURT.

Recordari facias loquelam [abbrev. *re. fa. lo.*], an original writ, in the nature of a *certiorari*, issuing out of Chancery, addressed to a sheriff to remove a cause depending in an inferior court not of record to a superior court; and it is called a *recordari*, because it commands the sheriff to make a record of the plaint in the ancient County Court, and then

to send up the cause. Obsolete.—*F. N. B.* 71.

Recorder, in municipal boroughs having a separate Court of Quarter Sessions, a barrister of five years' standing at least, appointed by the Crown, holding office during good behaviour, and receiving 'such yearly salary not exceeding that stated in the petition on which the grant of a separate Court of Quarter Sessions was made, as Her Majesty directs.' He is sole judge of the Court of Quarter Sessions, 'having cognizance of all crimes, offences, and matters cognizable by Courts of Quarter Sessions in England,' except that he may not grant licenses or hear licensing appeals under the Intoxicating Liquor Licensing Acts, or levy rates (Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, ss. 162, 165). He may appoint as 'deputy recorder' a barrister of five years' standing, in case of sickness or unavoidable absence (Ib., s. 166), and an 'assistant recorder' if it appears that the Quarter Sessions are likely to last more than three days (Ib., s. 168).

Recorders also existed in some of the places (see a list in the schedule to the Municipal Corporations Act, 1883) not subject to the Municipal Corporations Act, 1882.

Recorder of London, one of the justices of oyer and terminer, and a justice of the peace of the *quorum* for putting the laws in execution for the preservation of the peace and government of the city. Being the mouth of the city he delivers the sentences and judgments of the court therein, and also certifies and records the city customs, etc. He is chosen by the lord mayor and aldermen, and attends the business of the city when summoned by the lord mayor, etc., but by the Local Government Act, 1888, s. 42, subs. 14, after the vacancy next after the commencement of that Act, which vacancy has recently (Feb. 1892) happened by the death of Sir Thomas Chambers, 'no recorder shall exercise any judicial functions unless he is appointed by Her Majesty to exercise such functions.'

Recoup [fr. *recouper*, Fr., to cut again], to keep back something due; to recompense.

Recoverer, the demandant in a common recovery after judgment.

Recovery, the obtaining a thing by judgment or trial.

A *true* recovery is an actual or real recovery of anything, or the value thereof, by judgment; as if a man sue for any land or other thing movable or immovable, and gain a verdict or judgment.

A *feigned* recovery. An abolished common assurance by matter of record, in fraud of the statute *De Donis*, whereby a tenant in tail enlarged his estate-tail into a fee simple and so barred the entail, and all remainders and reversions expectant thereon, with all conditions and collateral limitations annexed to them, and subsequent charges subordinate to the entail. But incumbrances on the estate-tail equally affected such fee simple, and any estate or interest prior to the entail remains undisturbed.

This assurance consisted of two parts: (1) the recovery itself, which was a fictitious real action in the Court of Common Pleas, carried on to judgment, and founded on the supposition of an adverse claim; and (2) the recovery-deed, which was partly a preparatory step to suffering the recovery, and partly a declaration of the uses when suffered.

Recoveries were either legal or equitable.

The parties to a recovery action were: (1) the *Demandant*, or Recoverer, who was merely a formal party for the purpose of supporting the character of plaintiff; (2) the *Tenant*, or Recoveree, who was the person in whom the immediate freehold resided, and against whom the lands were to be demanded by the plaintiff; and (3) the *Vouchee*, who was called to warrant or vouch upon a supposed warranty, and took the defence on himself.

The action was begun by a writ of entry brought by the demandant, who was a mere nominee or stranger, either against him whose estate-tail was to be barred (who appeared and in defence vouched over the common vouchee—the crier of the court—if the recovery had been with a single voucher, which, however, was rarely, if ever, used, as it only barred the estate of which he was actually seised), or, which was more usual, against a person who was made by a previous conveyance the tenant to the *præcipe*, or writ, and who vouched the tenant-in-tail, who vouched over the common vouchee; this was called a recovery with double voucher, and effectually barred the entail, with every latent interest and all reversions and remainders expectant thereon. The only possible case in which a remainder with treble voucher was necessary was in the instance in which a tenant-in-tail created an entail derived out of his own, and the two entails were, in point of estate or of right, existing at one time in distinct persons, and both entails were to be barred.

To perfect the legal title, and to give a seisin to the demandant, a writ of *habere facias seisinam* must have been issued after judgment, and seisin duly delivered to him, whereupon the uses arose. This writ was returned by the sheriff, and the proceedings exemplified by the clerk of the court for the purpose of proving the suffering of the reco-

very. In a recovery deed the proper parties, either alone or jointly with other persons, as circumstances might have required, were: (1) the person who had the immediate freehold; (2) the intended vouchee; (3) the intended tenant; and (4) the intended demandant. See 1 *Shepp. Touch.* c. 3, and 1 *Prest. Conv.* c. 1. As to its origin and establishment, see 1 *Hall Cons. Hist.*, c. i. 12. The fiction was abolished by 3 & 4 Wm. IV. c. 74. See TAIL.

Recovery of Land, the title, since the Judicature Acts, of the action of ejectment to transfer the possession of land from the wrongful to the rightful owner.

Recreant, yielding. See CRAVEN.

Recreation grounds. The 22 Vict. c. 27 facilitates grants of land near populous places for their use for the regulated recreation of adults, and as playgrounds for children. See also 34 & 35 Vict. c. 13, and PUBLIC PARKS.

Recrimination, a charge made by an accused person against the accuser; in particular a counter-charge of adultery or cruelty made by one charged with the same offence in the Matrimonial Court against the person who has charged him [or her].

Recta prisa regis, the king's right to prisage, or taking of one butt or pipe of wine before, and another behind the mast, as a custom for every ship laden with wines.—*Cowel.* See PRISAGE.

Rectitudo, right or justice; legal dues, tribute or payment.—*Cowel.*

Recto, Breve de a writ of right, which was of so high a nature, that as other writs in real actions were only to recover the possession of the land, etc., in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.—*Cowel.*

There were two species: (1) writ of right patent, so called because it was sent *open*, and was the highest writ lying for him who had a fee-simple in the lands or tenements sued for, against the tenant of the freehold at least, and in no other case; this writ was likewise called *breve magnum de recto*; (2) writ of right close, which was brought where one held lands and tenements by charter in ancient demesne in fee-simple, fee-tail, or for term of life, or in dower, and was disseised. —*Co. Litt.* 158. Abolished by 3 & 4 Wm. IV. c. 27.

Recto de advocatione ecclesiæ, a writ which lay at Common Law, where a man had right of advowson of a church, and the parson dying, a stranger had presented.—*F. N. B.* 30.

Recto de custodiâ terræ et hæredis, a writ of right of ward of the land and heir. Abolished.

Recto de dote, a writ of right of dower, which lay for a widow who had received part of her dower, and demanded the residue, against the heir of the husband or his guardian. Abolished. See 23 & 24 Vict. c. 126, s. 26, and DOWER.

Recto de dote unde nihil habet, a writ of right of dower whereof she had nothing, which lay where her deceased husband, having divers lands or tenements, had assured no dower to his wife, and she thereby was driven to sue for her thirds against the heir or his guardian. Abolished. See *Ibid.*

Recto de rationabili parte, a writ of right, of the reasonable part, which lay between privies in blood, as brothers in gavelkind, sisters, and other coparceners, for land in fee-simple.—*F. N. B.* 9.

Recto quando (or **quia**) **dominus remisit curiam,** a writ of right, when or because the lord had remitted his court, which lay where lands or tenements in the seigniory of any land were in demand by a writ of right.—*F. N. B.* 16.

Recto sur disclaimer, an abolished writ on disclaimer.

Rector, a governor; in ecclesiastical law, either a layman, sometimes called a lay impropriator, who has that part of the revenues of a church which before the dissolution of the monasteries by King Henry VIII. was appropriated to a monastery, or in case where the living had not been appropriated, a spiritual person, who has the whole revenues together with the cure of souls. See 2 *Steph. Com.*

Rector sinecure, one without cure of souls.

Rectorial tithes, great or predial tithes.

Rectory, a spiritual non-appropriated living, composed of land, tithe, and other oblations of the people, separate or dedicate to God, in any congregation for the service of his church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed.—*Spelm.*

Rectum, right; also, a trial or accusation. —*Bract*; *Cowel.*

Rectum esse, to be right in court.

Rectum rogare, to ask for right; to petition the judge to do right.

Rectum, stare ad, to stand trial, or abide by the sentence of the Court.

Rectus in curiâ, one who stands at the bar of a court, and no accusation is made against him; also, said of an outlaw when he has reversed his outlawry.

Recuperatio, i.e., *ad rem, per injuriam extortam sive detentam, per sententiam judicis restitutio.* Co. Litt. 154 a.—(Recovery, that is restitution, by sentence of a judge to a thing wrongfully extorted or detained.)

Recuperatio est alicujus rei in causam alterius adductæ per judicem acquisitio. Ibid.—(Recovery is the acquisition, by sentence of a judge, of anything brought into the cause of another.)

Recuperatores, judges to whom the prætor referred a question.—*Civ. Law.*

Recurrendum est ad extraordinarium quando non valet ordinarium.—(We must have recourse to what is extraordinary, when what is ordinary fails.)

Recusants, persons who wilfully absented themselves from their parish church, and on whom penalties were imposed by various statutes (e.g., 1 Eliz. c. 2, and 3 Jac. I. c. 4, repealed by 9 & 10 Vict. c. 59) passed during the reigns of Elizabeth and James I.—4 *Br. & Had. Com.* 62.

Recusatio Judicis, a refusal of, or exception to, a judge upon any suspicion of partiality.—*Civ. Law.*

Red [fr. *ræd,* Sax.], advice.

Red-book of the Exchequer [*liber rubens scaccarii,* Lat.], an ancient record, wherein are registered the names of those who held lands *per baroniam* in the time of Hen. II. —*Ryley,* 667.

Reddendo singula singulis, the method of construction applied in such a sentence as this: 'if any one shall draw or load any sword or gun'; the word 'draw' is applied to 'sword' only, and the word 'load' to 'gun' only, the former verb to the former noun, and the latter to the latter, because it is impossible to load a sword or draw a gun; and so of other applications of different sets of words to one another. See ACTS OF PARLIAMENT.

Reddendum, a clause reserving rent in a lease, whereby a lessor retains some new thing to himself out of that which he granted before: it commonly and properly succeeds the *habendum,* and is usually made by the words 'yielding and paying,' or similar expressions.

In every reservation these things must concur:—(1) It must be by certain and apt words. Thus, a lease for years, reserving rent 'after the rate' of 18*l.* a year, is void for uncertainty. (2) It must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of some thing issuing out of another thing. (3) It must be of such thing whereunder the grantor may have resort to distrain. (4) It must be made to one of the grantors, and not to a stranger to the deed.—2 *Br. & Had. Com.* 485. See DEED.

Reddere, nil aliud est quam acceptum restituere: seu, reddere est quasi retrò dare; et redditur dicitur a redeundo quia retrò it. Co. Litt. 142.—(To render is nothing more than to restore that which has been received; or, to render it as it were to give back, and it is called rendering from returning, because it goes back again.)

Reddidit se (*he has rendered himself*), applied to a principal who renders himself to prison in discharge of his bail.

Redditarium, a rental of an estate or manor.

Redditarius, a renter.—*Cowel.*

Reddition, a surrendering or restoring; also, a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person surrendering.—*Cowel.*

Redeemable rights, rights which return to the conveyer or disposer of land, etc., upon payment of the sum for which such rights are granted.

Re-delivery, a yielding and delivering back of a thing.

Re-demise, a re-granting of land demised or released.

Redemption 1. A paying off of a loan; see, e.g., National Debt Act, 1870, 33 & 34 Vict. c. 71, s. 5, and sched. 1, as to the terms on which the national debt is redeemable; and see also CONVERSION.

2. Commutation, or the substitution of one lump payment for a succession of annual ones. See as to Land Tax 42 Geo. III. c. 116; 53 Geo. III. c. 123; and 16 & 17 Vict. c. 74; as to Tithe Rent-charge, 9 & 10 Vict. c. 73, and 41 & 42 Vict. c. 42; and as to Quit Rents, etc., Conveyancing Act, 1881, s. 45.

Redemption, Equity of. See EQUITY OF REDEMPTION.

Red-handed, with the marks of crime fresh on him.

Redhibition, [fr. *redhibitio,* Lat.], an action allowed to a buyer by which to annul the sale of some movable, and oblige the seller to take it back again upon the buyer finding it damaged, or that there was some deceit.—*Civ. Law; Sand. Just.,* 7th ed., 365.

Re-disseisin, a disseisin made by him who once before was bound and adjudged to have disseised the same person of his lands or tenements.—*F. N. B.* 188; 1 *Reeves,* 263.

Reditus albi, white rents, or rents paid in silver.—1 *Steph. Com.*

Reditus assisus, a set or standing rent.

Reditus capitales, chief rent paid by freeholders to go quit of all other services.

Reditus nigri, black mail; rents paid in grain or base money.—1 *Steph. Com.*

Reditus quieti, quit rents, see that title, and 1 *Steph. Com.*

Reditus siccus, a rent seck, or barren, the owner of which has neither seigniory nor reversion, nor any express power of distress

reserved to him.—See 4 Geo. II. c. 28; 1 *Steph. Com.*

Redmans, or **Radmans**, men who, by the tenure or custom of their lands, were to ride with or for the lord of the manor, about his business.—*Domesday.*

Re-draft, a second bill of exchange.

Red Sea and Indian Telegraph Act, 1859, 22 & 23 Vict. c. 4; amended by 24 Vict. c. 4; 25 & 26 Vict. c. 39.

Redubbers, persons who bought stolen cloth and turned it into some other colour or fashion that it might not be known again. 3 *Inst.* 134; *Cowel.*

Reductio ad absurdum, the method of disproving an argument by showing that it leads to an absurd consequence.

Reduction, an action for the purpose of setting aside or rendering null and void some deed, will, right, etc.—*Bell's Scotch Law Dict.*

Reduction ex capite lecti. By the law of Scotland the heir in heritage was entitled to reduce all voluntary deeds granted to his prejudice by his predecessor within sixty days preceding the predecessor's death; provided the maker of the deed, at its date, was labouring under the disease of which he died, and did not subsequently go to kirk or market unsupported.—*Bell's Scotch Law Dict.* But such reductions have now been abolished by the 34 & 35 Vict. c. 81.

Reduction improbation, one form of the action of reduction in which falsehood and forgery are alleged against the deed or document sought to be set aside.—*Scotch Law.*

Redundancy, impertinent or foreign matter inserted in a pleading.

Re-entry, the resuming or retaking that possession which any one has lately foregone.

Re-entry [*proviso for*], a clause usually inserted in leases that upon non-payment of rent, or breach of covenant, the term shall cease. See FORFEITURE (5).

Reeve [fr. *gerefa*, Sax.], a steward or bailiff. See DYKE-REEVE; FIELD-REEVE.

Re-examination, an examination of a witness after a cross-examination upon matters arising out of such cross-examination. If the re-examination disclose new matter which the cross-examining party could not anticipate, the Court in its discretion may permit him to cross-examine upon it.

'**Re-exchange** is,' says *Byles* (*on Bills*, 11th ed.), 'the difference in the value of a bill occasioned by its being dishonoured in a foreign country in which it was payable. The existence and amount of it depend on the rate of exchange between the two countries. The theory of the transaction is this: a merchant in London endorses a bill for a certain number of Austrian florins, payable at a future date in Vienna. The holder is entitled to receive in Vienna, on the day of the maturity of the bill, a certain number of Austrian florins. Suppose the bill to be dishonoured. The holder is now, by the custom of merchants, entitled to immediate and specific redress by his own act in this way: he is entitled, being in Vienna, then and there to raise the exact number of Austrian florins, by drawing and negotiating a cross-bill payable at sight on his endorser in London, for as much English money as will purchase in Vienna the exact number of Austrian florins at the rate of exchange on the day of dishonour; and to include in the amount of that bill the interest and necessary expenses of the transaction.'

Re-extent, a second extent on lands or tenements, on complaint that the former was partially made, etc.—*Cowel.*

Re. Fa. Lo., the abbreviation of *recordari facias loquelam*, which see.

Refare, to bereave, take away, rob.—*Cowel.*

Refaction, reparation of a building.—*Civ. Law.*

Referee, one to whom anything is referred; an arbitrator. Also persons to whom are referred questions as to the *locus standi* of petitioners against private parliamentary bills. Consult the works of *Smethurst* or *Clifford & Stephens* hereon. See further next title.

Reference was the sending of any matter of inquiry by the Court of Chancery to a chief clerk, a taxing master, or a conveyancing counsel, that he might examine it and certify the result to the Court. References in cases involving matters of account were also frequently made to the masters of the courts of Common Law under the C. L. P. Acts.

The Judicature Acts and rules did not repeal the powers of reference to masters under the Common Law Procedure Acts (Judicature Act, 1873, s. 83), but made provision for attaching to the Supreme Court permanent official referees, and four official referees were appointed shortly before that Act came into operation. To any of such official referees, or to a special referee, questions arising in an action may, by the Arbitration Act, 1889, ss. 13, 14, re-enacting parts of ss. 56 and 57 of the Judicature Act, 1873, be referred: (1) subject to the right to a jury for inquiry and report; or (2) where the parties consent, and also without such consent in any cause 'requiring any prolonged examination of documents or accounts or any scientific or local investigation which

cannot, in the opinion of the Court, conveniently be made before a jury, or conducted by the Court through its other ordinary officers' for trial.

The Arbitration Act, 1889, 52 & 53 Vict. c. 49, has amended and consolidated the law of references. See also ARBITRATION; ARBITRATOR.

Referendary, one to whose decision anything is referred.—*Cowel; Spelm.*

Referendum, a note addressed by an ambassador to his own government touching a proposition, as to which he is without power and instructions. Also, a mode, obtaining in Switzerland, of appealing from an elected body to the whole body of electors.

Reform Acts, 2 & 3 Wm. IV. c. 45 (1832), 30 & 31 Vict. c. 102 (1867), commonly called the Representation of the People Act; and 48 Vict. c. 3 (1884), the Representation of the People Act, 1884. The Acts of 1832 and 1867 apply to England and Wales only, there being separate Acts for Scotland and Ireland at the same period; the Act of 1884 applies to Scotland and Ireland as well.

Reformatory Schools, schools to which convicted juvenile offenders (under sixteen) may be sent, for not less than two nor more than five years, by order of the Court before which they are tried, if the offence be punishable with penal servitude or imprisonment, and the sentence be to imprisonment for ten days or more. See 'The Reformatory Schools Act, 1866,' 29 & 30 Vict. c. 117, consolidating and amending 17 & 18 Vict. c. 86; 18 & 19 Vict. c. 87; 19 & 20 Vict. c. 109; 20 & 21 Vict. c. 55; and itself amended by 35 & 36 Vict. c. 21, and 37 & 38 Vict. c. 47, and 54 & 55 Vict. c. 23, by which the offenders may be apprenticed or allowed to emigrate before their period of detention is expired; *Chit. Stat.*, vol. 2., tit. '*Education*' (*Reformatory Schools*).

Refresher. A further or additional fee to counsel in a long case, which may be, but is not necessarily, allowed on taxation.—*Laurie* v. *Wilson*, *L. R.* 10 *C. P.* 152.

Refreshment House; a house, etc., 'kept open for public refreshment, resort, and entertainment between 10 p.m. (24 & 25 Vict. c. 91, s. 8) and 5 a.m.,' to keep which an inland revenue license only is required unless wine, etc., be sold therein, in which case a license from justices of the peace is required also. See PUBLIC-HOUSE CLOSING ACT; 23 Vict. c. 27; 23 & 24 Vict. c. 107; 32 & 33 Vict. c. 27; and 35 & 36 Vict. c. 94; which latter Act repeals 27 & 28 Vict. c. 64, and 28 & 29 Vict. c. 77, except in so far as relating to refreshment houses where no intoxicating liquors are sold.

Refusal, where one has, by law, a right and power of having or doing something of advantage, and he declines it.

Regale episcoporum, the temporal rights and privileges of a bishop.—*Cowel.*

Regal fish, whales and sturgeons.—2 *Steph. Com.*

Regalia, the royal rights of a sovereign, which the civilians reckon to be six—viz., power of judicature, of life and death, of war and peace, masterless goods, as waifs, estrays, etc., assessments, and minting of money. See MAJORA and MINORA REGALIA.

Regalia facere, to do homage or fealty to the sovereign by a bishop when he is invested with the regalia.

Regality, a territorial jurisdiction in Scotland conferred by the Crown. The lands were said to be given *in liberam regalitatem*, and the persons receiving the right were termed lords of regality.—*Bell's Scotch Law Dict.*

Regard, Court of, a tribunal held every third year for the lawing or expeditation of dogs, to prevent them from chasing deer.—*Cowel.*

Regard of the Forest, the oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice-seat, to see and inquire after trespassers, and for the survey of dogs.—*Manw.*

Regardant Villein, or **Regardant to the Manor,** an ancient servant or retainer annexed to the manor or land, who did the base services within the manor.—1 *Inst.* 120.

Regard of the Forest [*regardator forestiæ*, Lat.], an ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offences, etc.—*Manw.*

Rege inconsulto, a writ issued from the sovereign to the judges not to proceed in a cause which may prejudice the Crown, until advised.—*Jenk. Cent.* 97.

Regency, a temporary monarchy.

Regent, one invested with vicarious royalty. See 3 & 4 Vict. c. 52.

Regest [fr. *registum*, Lat.], a register.—*Milton.*

Regia dignitas est indivisibilis et quælibet alia derivativa dignitas est similiter indivisibilis. 4 Inst. 243.—(The kingly power is indivisible, and every other derivative power is similarly indivisible.)

Regiam Majestatem, a collection of the ancient laws of Scotland. It is said to have been compiled by order of David I., King of Scotland, who reigned from A.D. 1124 to 1153.—*Hale's Hist.* 271.

Regicide, the murder of a sovereign.

Regio assensu, a writ whereby the sove-

reign gives his assent to the election of a bishop.—*Reg. Orig.* 294.

Register [fr. *gîter*, Fr., to lodge], a public book serving to enter and record memoirs, acts, and minutes, to be had recourse to for the establishing matters of fact; as the register of joint-stock companies under the Companies Act, 1862, of bills of sale under the Bills of Sale Act, 1878, of births, deaths, and marriages, and of baptisms.

Register of Writs, an old book in which new forms of original writs were entered. The Register of Writs is said to be the oldest book in the law—a character which may, in a great measure, be true, but should not be allowed without some consideration. It is not more certain than extraordinary that the forms of writs were settled in their substance and language very nearly in the manner in which they were drawn ever after. However, this uniformity was not so exact as that the writs published and used in the reign of Henry VIII. were all of them identically the same with those used at the first origin of this invention, in the reign of Henry II. It is not to be wondered at that there should be a difference in these forms at their infancy, and at this advanced state of our law; but it is remarkable that the difference should be so small.—4 *Reeves*, 426; *Co. Litt.* 16 *b*, 37 *b*, 159 *a*.

Registrarius, a notary or registrar.

Registrar, or **Registrary**, an officer whose business is to write and keep a register; as the Registrar of a County Court under s. 25 of the County Courts Act, 1888, of solicitors under 6 & 7 Vict. c. 73, s. 31 (see INCORPORATED LAW SOCIETY); of friendly societies under the Friendly Societies Act, 1875, 38 & 39 Vict. c. 60, s. 10; and of the Privy Council.

Registrar, District. See DISTRICT REGISTRAR.

Registrar-General, an officer appointed by the Crown under the Great Seal, to whom, subject to such regulations as shall be made by a principal secretary of state, the general superintendence of the whole system of registration of births, deaths, and marriages is entrusted.—6 & 7 *Wm. IV.* c. 86, ss. 2, 5; 3 *Steph. Com.*

Registrar-General of Seamen. To secure the great object of affording general information from time to time as to the state of our mercantile marine, it is provided that there shall be in the port of London a 'General Register and Record Office for Seamen,' under the management of this officer. See 17 & 18 Vict. c. 104, ss. 271—79, and 25 & 26 Vict. c. 63, s. 4.—3 *Steph. Com.*

Registration of Births, Deaths, and Marriages. See 52 Geo. III. c. 146; 6 & 7 Wm. IV. c. 86; 19 & 20 Vict. c. 119, and 37 & 38 Vict. c. 88, whereby the law relating to the registration of births and deaths has been amended, and the law respecting the registration of births and deaths at sea has been consolidated.

As to the registration of burials, see 27 & 28 Vict. c. 97.

Registration of Charges on Land. By the Land Charges Registration and Searches Act, 1888, 51 & 52 Vict. c. 51, provision is made for the registration of writs and orders and deeds of arrangement (see ARRANGEMENT) affecting land, and of 'land charges' (see that title); for the protection of purchasers for value of the land in case of non-registration; and for allowing searches of the registers on payment of fees.

Registration of Copyright. The 5 & 6 Vict. c. 45, authorises in every case of copyright, the registration of the title of the proprietor at Stationers' Hall; and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to affect the copyright itself.

Registration of Electors. It is requisite that a voter in the election of members of parliament, town councillors, and county councillors should be duly registered before he exercises the franchise. See 6 Vict. c. 18 and other statutes, *Chit. Stat.*, vol. 4, tit. '*Parliament*,' under which the registers are revised annually by a 'revising barrister.' By s. 7 of the Ballot Act, 1872, 35 & 36 Vict. c. 33, the register is conclusive as to the right to vote, so that no person not registered may vote, but every person registered (except persons prohibited by statute, e.g., minors, or by common law, e.g., women) may.

Registration of Joint-Stock Companies. See JOINT-STOCK COMPANIES.

Registration of Marriages (Ireland) Act, 1863, 26 & 27 Vict. c. 90.

Registration of Parish Apprentices. See 43 Eliz. c. 2, s. 5; 8 & 9 Wm. III. c. 30; 18 Geo. III. c. 57; 56 Geo. III. c. 139; 42 Geo. III. c. 46; 7 & 8 Vict. c. 101, ss. 12, 13; and see 2 *Steph. Com.*

Registration and Protection of Designs Act. See 5 & 6 Vict. c. 100, amended by 24 & 25 Vict. c. 73; 6 & 7 Vict. c. 65; 13 & 14 Vict. c. 104; 14 & 15 Vict. c. 8; 15 & 16 Vict. c. 6; 21 & 22 Vict. c. 70; 24 & 25 Vict. c. 73; 25 & 26 Vict. c. 12.

Registrum Brevium, a register of writs, which see.

Registry, District. See DISTRICT REGISTRIES.

Registry of Ships. The registry of ships

appears to have been introduced into this country by the Navigation Act, 12 Car. II. c. 18, A.D. 1660; several provisions were made with respect to it by the 7 & 8 Wm. III. c. 22, and the whole was reduced into a system by the 27 Geo. III. c. 19.

The great object was to exclude foreign ships from those departments in which they were prohibited from engaging by the navigation laws, by distinguishing really British ships. It has also been considered advantageous to individuals, by preventing the fraudulent assignment of property in ships; but Lord Tenterden has observed, 'The instances in which honest transactions are unavailable through a non-compliance with the forms requiring a public register of conveyances, make the expediency of all such regulations, considered with reference to private benefit only, a matter of question.'—*Law of Shipping*, pt. 1, c. 2.

The Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, provides that no ship shall be deemed a British ship unless she belong wholly to owners who are either natural-born subjects, persons made denizens, or persons naturalised, either by Act of Parliament, or the proper legislative authority in some British possession; or bodies corporate established under and subject to the laws of, and having their principal place of business in, the United Kingdom or some British possession (s. 18). Every British ship must be registered, or she shall not be recognized as a British ship, nor entitled to any of the advantages enjoyed by them, or to use the national flag. This registration may be made in the United Kingdom at any port approved by the commissioners of customs for the registry of ships, with the collector or comptroller, etc., of customs; and the port of registry is to be considered that to which she belongs, until the registry is transferred (18 & 19 *Vict.* c. 91, s. 12). The registration must comprise the name of the ship, which cannot be changed, and the names and descriptions of the owners. Observe further: (1) The property in any ship is always to be divided for this purpose into sixty-four shares. (2) No person is to be registered as owner of any fractional part of a share. (3) The registered owners are not to exceed thirty-two, but any number not exceeding five may be registered as joint-owners of any share. (4) The property in the ship or its shares, so far as regards the power of making a valid title as owner to a purchaser, is vested exclusively in the registered owners; though any number of other persons may be *beneficially* or *equitably* interested, and may enforce their rights in that capacity. A registered ship, or any share therein, when disposed of to a person qualified to be the owner of a British ship, shall be transferred by a bill of sale under seal, upon which the name of the transferee shall be entered on the register book; and a registered ship, or any share therein, may be mortgaged and the mortgage entered in the register book; and where there are several mortgages, the priorities are to be according to the time of registry (ss. 30—100, and 18 & 19 Vict. c. 91). See also 25 & 26 Vict. c. 63, ss. 3, 4; 36 & 37 Vict. c. 85, ss. 3, 6, and 29; and 3 *Steph. Com.*

Registry of Title to Land. See DECLARATION OF TITLE; TRANSFER OF LAND ACTS.

Regius professor, a royal professor, or reader of lectures, founded in the universities by the king. Henry VIII. founded in each of our universities five professorships—viz., of Divinity, Greek, Hebrew, Law, and Physic.

Regnant, reigning, having regal authority. See QUEEN; and 2 *Steph. Com.*

Regni populi, a name given to the people of Surrey and Sussex, and on the sea-coasts of Hampshire.—*Blount.*

Regnum ecclesiasticum, the ecclesiastical kingdom.—2 *Hale's Hist. P. C.* 324.

Regnum non est divisibile. Co. Litt. 165.—(The kingdom is not divisible.)

Regrating, buying corn, etc., in any market, and selling it again in or near to the same place.—*Cowel.* It was illegal, but is, by 7 & 8 *Vict.* c. 24, now no longer so.

Regress, Letters of. They were granted by the superior of lands mortgaged to the wadsettor or mortgagor. Their object was this: by the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the wadsetter at any time when he should demand entry.—*Bell's Scotch Law Dict.* See 20 Geo. II. c. 50.

Regulæ generales (*General Rules*), which the Courts promulgate from time to time for the regulation of their practice. Before the Judicature Act the more important of these were those promulgated in Hilary Term, 1853, abbreviated as '*R. G. H. T.* 1853.' Since the Judicature Act the description is 'Rules of the Supreme Court,' abbreviated as '*R. S. C.*'

Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere. Cod. 1, 18, 10.—(It is a rule, every one is prejudiced by his ignorance of law but not by his ignorance of fact.)

Regular clergy, the monks, who lived *se-*

cundum regulas of their respective houses or societies.—2 *Steph. Com.*

Regulariter non valet pactum de re meâ non alienandâ. Co. Litt. 223.—(It is a rule that a compact not to alienate my property is not binding.)

Regulars, those who profess and follow a certain rule of life (*regula*), belonging to a religious order, and observe the three approved vows of poverty, chastity, and obedience.

Rehabere facias seisinam, a judicial writ which lay when the sheriff in the *habere facias seisinam* had delivered more than he ought.—*Reg. Judic.* 13.

Rehabilitate, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore a forfeited right.

Re-hearing. See APPEAL.

Reif [fr. *refian*, SAX.], a robbery.—*Cowel.*

Re-insurance, or **Re-assurance**, a contract by which a first insurer relieves himself from the risks which he has undertaken, and devolves them upon other insurers, called re-insurers or re-assurers; but see 19 Geo. III. c. 37.—Consult *Arnould on Marine Insurance*, 6th ed., 103 *et. seq.*

Republicæ interest, voluntates defunctorum effectum sortiri.—(It concerns the state that the wills of the dead should have their effect.)

Reissuable notes, notes payable to the bearer on demand, for any sum not exceeding 100*l.*, and not less than 5*l.*, duly stamped according to the 55 Geo. III. c. 184, may be re-issued after payment as often as may be thought necessary without a new stamp, provided an annual licence for that purpose be taken out.—*Byles on Bills*, 11th ed., 105, 169.

Rejoinder, a defendant's answer to a plaintiff's reply, which must have been delivered within four days after notice, unless the defendant was under any terms of 'rejoining gratis,' which meant rejoining within four days from the delivery of the replication without a notice to rejoin, or a demand of a rejoinder. It did not apply to a joinder in demurrer; therefore, on a demurrer to a plea, the defendant was entitled to four days to join in it from the service of a notice to do so.

'No pleading subsequent to reply' (in an action in the High Court of Justice) 'other than a joinder of issue, shall be pleaded without leave'; 'and subject to that rule every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading' (R. S. C. 1883, Ord. XXIII., rr. 2, 3). See REPLY.

Relation, where two different times or other things are accounted as one, and by some act done the thing subsequent is said to take effect by relation from the time preceding. Thus letters of administration relate to the intestate's death, and not to the time when they were granted. See 2 *Steph. Com.*, 7th ed., 167. See FORFEITURE.

Relatio est fictio juris et intenta ad unum. 3 Co. 28.—(Relation is a fiction of law, and is intent to one point.)

Relatio semper fiat ut valeat dispositio, et quando ad duas res referri potest dispositio ita quod secundum unam vitiatur et secundum alteram utilis est, tunc facienda est relatio ut valeat dispositio. 6 Co. 76.—(Let reference be made always in such a manner that the disposition may avail; and when a disposition is referable to two things, so that by one it is bad, and by the other is good, then let the reference be made to that by which the disposition may avail.)

Relative powers, those relating to realty.

Relativorum, cognito uno, cognoscitur et alterum. Cro. Jac. 539.—(Of relative, one being known, the other is also known.)

Relator, a rehearser, teller, or informer. This was the name given to a plaintiff in an information in Chancery, where the rights of the Crown were not immediately concerned, who was responsible for costs; he must have given the solicitor a written authority to file the information.—15 & 16 *Vict.* c. 86, s. 11. For the former information in Chancery an action is now substituted. See Jud. Act, 1875, Ord. I., r. 1.

Also a person who brings an information in the nature of a *quo warranto*, or a criminal information.

Release [fr. *relaxatio*, Lat.], a gift, discharge, or renunciation of a right of action; also a Common Law conveyance, the operative verb in which is 'release'; hence the name. It operates or inures in five modes:—

(*a*) By passing an estate (*mitter l'estat*), as where a joint-tenant or coparcener conveys his estate to his co-joint-tenant or coparcener. In consequence of the privity between such parties, a fee-simple will pass without any words of limitation. Tenants in common, however, cannot thus release to one another, since they have distinct interests in the property.

(*b*) By transferring a right (*mitter le droit*), as in the case of a disseisee discharging his right to a disseisor, his heir, or grantee. Words of limitation are not necessary, since the subject of transfer is a simple right, which once discharged is for ever extinguished, and not an estate which may be qualified or restricted.

The difference between this and the previous mode is, that the former passes an estate, where a privity exists between the parties; this passes only a right, in the absence of privity.

(*c*) By extinguishment, as the lord releasing his seigniorial rights to his tenant, or a life tenant having conveyed a greater estate than he owns, the expectant releasing his right to the tenant's grantee. A release of all demands extinguishes all actions and titles, and is the amplest discharge that can be given.

(*d*) By enlarging a particular estate into an estate commensurate with that of the person releasing; but a privity of estate must at the time exist between the releasor and the releasee, who must have an estate actually vested in him susceptible of enlargement.

(*e*) By entry and feoffment, as a disseisee releasing to one of two disseisors, who then becomes as solely seised as if the disseisee had entered upon the property, put an end to the disseisin, and then enfeoffed such disseisor.

Releasee, the person to whom a release is made.

Releaser, or **Releasor**, the maker of a release.

Relegation, exile; judicial banishment.

Adjuration is forswearing the realm for ever; relegation is banishment for a time only.—*Co. Litt.* 133. In Rome, relegation was a less severe punishment than deportation, in that the relegated person did not thereby lose the rights of a Roman citizen, nor those of his family, as the authority of a father over his children, etc.—*Encyc. Lond.*; *Sand. Just.*, 7th ed., 48.

Relevancy. In Scotch law the relevancy is the justice or sufficiency in law of the allegations of a party. A plea to the relevancy is therefore analogous to the demurrer of the English Courts.

Relevant, applying to the matter in question; affording something to the purpose.

Relict, a widow.

Relictâ verificatione, where a judgment was confessed by *cognovit actionem* after plea pleaded, and the plea was withdrawn, it was called a confession or *cognovit actionem relictâ verificatione*.—2 *Chit. Arch. Prac.*

Formerly, a defendant who had pleaded a bad plea which was demurred to, could withdraw it by entering a *relictâ verificatione*, upon which he would not have to pay costs until the plaintiff obtained judgment in the action; but by Reg. Gen. H. T. 1853, r. 8, 'a defendant shall not be at liberty to waive his plea, or enter a *relictâ verificatione* after a demurrer, without leave of the court or a judge, unless by consent of the plaintiff or his attorney.'—2 *Chit. Arch. Prac.*

Reliction, the sudden recession of the sea from land. See DERELICTION.

Relief, legal remedy for wrongs, etc.; charitable assistance.

In the feudal law a payment made to the lord by the tenant coming into possession of an estate held under him. Abolished with other feudal grievances.

Relief against Forfeiture (of Lease). See FORFEITURE (5).

Religion, offences against; they are thus enumerated by Blackstone: (1) Apostasy. (2) Heresy. (3) Reviling the ordinances of the Church. (4) Blasphemy. (5) Profane swearing. (6) Conjuration or witchcraft. (7) Religious imposture. (8) Simony. (9) Profanation of the Lord's Day. (10) Drunkenness. (11) Lewdness. See BLASPHEMY.

Religious houses, places set apart for pious uses, such as monasteries, churches, hospitals, and all other places where charity was extended to the relief of the poor and orphans, or for the use or exercise of religion. —*Steph. Com.*, 7th ed., i., 358; ii. 279; iv. 159.

Religious men [fr. *religiosi*], such as entered into some monastery or convent, there to live devoutly. They were held to be *civiliter mortui*.

Relinquishment, a forsaking, abandoning, or giving over.

Reliqua, the remainder or debt which a person finds himself debtor in upon the balancing or liquidation of an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays piecemeal.—*Encyc. Lond.*

Reliques, remains, such as the bones, etc., of saints, preserved with great veneration as sacred memorials; they have been forbidden to be used or brought into England.—3 *Jac. I.* c. 26.

Relocation, a re-letting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.—*Scotch Law.*

Rem, Action in, in the Admiralty Court. By proceedings *in rem* the property in relation to which the claim is made, or the proceeds of such property in court, can be made available to answer the claim, and be proceeded against. See *Williams and Bruce Adm. Pr.* 186. See ADMIRALTY.

Rem, Information in, when any goods are supposed to become the property of the Crown, and no one appears to claim them or to dispute the title, as anciently in the case of treasure-trove, wrecks, waifs, and estrays seized by the Crown's officers. After such seizure an information was usually filed in the Exchequer, and thereupon a proclamation was made for the owner (if any) to come in and claim the effects, and at the same time there issued a commission of appraisement

to value the goods, after the return of which and a second proclamation made, if no claimant appeared, the goods were supposed derelict, and condemned to the use of the Crown; and when in later times forfeitures of the goods themselves, as well as personal penalties on the parties, were inflicted by Act of Parliament for transgressions against the laws of the customs and excise, the same process was adopted in order to secure such forfeited goods for the public use, though the offender had escaped justice. See 18 & 19 Vict. c. 90, as to the Crown paying costs. See now ACTION.

Rem, Judgment in, a judgment which gives to the successful party possession of some definite thing. See *The Duchess of Kingston's case*, and notes thereto, 2 *Sm. L. C.*

Remainder [fr. *remanentia*, Lat.], that expectant portion, remnant, or residue of interest which, on the creation of a particular estate, is at the same time limited over to another, who is to enjoy it after the determination of such particular estate.

It may be limited in inheritable or non-inheritable freehold estates, but not strictly and technically in chattels real or personal, although these may be limited over after a previous limitation or a partial interest in them. It may be limited by way of use (which is, in practice, the usual method), as well as by a conveyance deriving its effect in reversion.

In the same land there may at the same time be an estate in *possession*, and one estate or several estates in *remainder*, and an estate from the Common Law.

When the estate in possession is determined, the estate in remainder (if there be any), otherwise the estate in reversion, will become an estate in possession, with priority as to the estates in remainder, when there are several, according to the order in which they are limited.

An interest in possession, and an interest in remainder or reversion, are several parts of the same estate. When there are a particular estate and a remainder, the several limitations give distinct interest to the persons to whom these limitations are made.

These interests (different as they are in their nature), and also a reversion, are with reference to the person by whom the limitations are made, and the connection and relative situation of the tenants, several parts of the same estate.

Estates are said to be in remainder or reversion, according to the relative situation they bear to each other.

The interest which as to one man is an estate in remainder, may, as to another person, be an estate in reversion. Thus if A. leases to B. for life, with remainder to C. in fee, and C. leases to D. for life, the estate of C. is still a remainder in reference to the estate of B., but in reference to the estate of D. it is a reversion.

So an estate which as to one person is an estate in possession, or a particular estate, may, as to another person, be an estate in reversion; and consequently there may be two reversions in the same land. As if A. lease to B. for life, B. has the possession and A. the reversion as between themselves; and if B. lease to C., then as between B. and C., C. has the possession and B. the reversion; hence the doctrine of privity of estate.

A remainder does not, like a reversion, arise by operation of law, but is always created by act of parties. It may be granted over, charged, devised, or barred by a prior tenant in tail. Mr. Burton (*Comp.* p. 8) thus indicates the difference between a reversion and a remainder.

If the gift were simply 'to you for your life,' the reversion in fee-simple would remain in the feoffer. But this consequence would be varied if the gift were 'to you for your life, and after your decease to A. and his heirs'; or to you for twenty-one years, and subject to that estate to A. and his heirs'; or 'to you and the heirs of your body' (which would constitute an estate tail); 'and upon your decease, and failure of your issue, to A. and his heirs.' In any of these three cases A. would take an estate in fee-simple, giving him a right to the possession of the land upon the death of the feoffee, or the expiration of twenty-one years, or the extinction of the feoffee and his issue. But this estate is not called a *reversion*—as the land does not revert or return to the feoffer—but a *remainder*, being the residue or remnant of the whole estate conveyed, after subtracting the feoffee's estate; which last, in relation to the remainder, as in this, or to the reversion, as in the former, case is called the *particular estate.*

The rule against perpetuities does not apply to remainders:—1st, because every remainder which is contingent must vest in interest during the continuance of the particular estate or the very instant it determines; and, 2ndly, because the owner of every vested remainder, being an estate of inheritance, and which must be an estate tail if there are remainders over, has the power when in possession of barring all subsequent remainders.

Remainders are of three kinds:—(1) vested or executed; (2) contingent or executory; and (3) cross.

The seven following rules affecting remainders should be observed:—

(1) There must be a present or particular estate created which, if the remainder be vested, must be, at least, for years, but an *interesse termini* would be sufficient; or, if the remainder be contingent, it must be an estate of freehold, expressly limited, or arising by a resulting or implied use in order to give such a remainder existence. A chattel interest will not support a contingent remainder, since, while the contingency is in suspense, there must be an ulterior estate of freehold vested in some person, for otherwise there would be no vested freehold at law, which the law will not allow. There is not, however, any necessity for a preceding freehold to support a contingent remainder for years; for such a remainder not amounting to a freehold, no freehold estate appears requisite to pass out of the grantor in order to give effect to a chattel remainder.

(2) The particular estate and the remainders must be created by the same deed or instrument, but a will and codicil may be fairly denominated the same instrument, for they take effect at the same time; and a deed giving a power, and the appointment exercising such power, are esteemed the same deed.

(3) The remainder must vest in the grantee during the particular estate, or the very instant it determines. But an estate limited on a contingency may fail as to one part, and take effect as to another, wherever the preceding estate is in several persons in common or in severalty; for the particular tenant of one part may die before the contingency, and the particular tenant of another part may survive it. Posthumous children are capable of taking in remainder in the same manner as if they had been born in their father's lifetime, and the remainder vests in them while yet *in ventre matris*.—10 & 11 *Wm. III.* c. 16.

(4) A contingent remainder must be limited, upon a legal event, to some one that may by common possibility be in being, at or before the determination of the particular estate.

(5) It is not necessary for the support of a contingent remainder that the preceding estate of freehold continue in the actual seisin of the rightful tenant; it is sufficient that there subsists a right to such preceding estate at the time the remainder should vest, provided such right be a present subsisting right of entry preceding the contingency, and not a right of action. It is necessary to distinguish between a right of entry and a right of action. If A. is disseised by B., then, while the possession continues in B., it is a mere possession unsupported by any presumption of right, and A. may restore his possession by an entry on the land, without any previous action. If A. enter and B. defend his possession, and the question is tried in a possessory action, the gist of it must be who has the better title to the possession, and A. must necessarily recover. Thus far the party disseised, even during the disseisin, is considered in law to be the rightful tenant. But, if B. continue in the possession of the estate till his decease, the law, at his decease, casts the possession upon his heir; thus, upon B.'s decease his heir acquires the possession by act of law, and his title, though immediately derived from a person who himself acquired it by wrong, is so far respected in law that A. cannot restore his possession by entry, and can only recover it by action. This removes A.'s title one degree farther than while he could restore his possession by entry, and is therefore said to reduce him to a right of action, and it is called a right of action in contradistinction to a right of entry.

(6) Where a contingent remainder is limited to the use of several who do not all become capable at the same time, notwithstanding it vests in the person first becoming capable, yet it shall divest as to the proportions of the persons afterwards becoming capable, before the determination of the particular estate.

(7) If a condition be annexed to a particular estate, making it void on a given event, and a remainder be limited to take effect not only on the determination of the particular estate but on the destruction of that estate, by the effect of the condition the remainder is void; the Common Law rule being that a stranger shall not take advantage of a condition, but only the grantor or his heirs. But if the condition for defeating the prior estate be to operate on one event, and the remainder be to arise on another and totally different event, the remainder will not be void, but the particular estate will be discharged from the condition. If A. make a feoffment to B., a widow, for life, provided that if she marry again then her estate shall cease, and immediately after her death *or second marriage* the estate shall enure to B. in fee, *this* is a bad remainder; because it is limited to take effect, not only on the determination of the widow's estate, but also on the event which is mentioned in the condition to cut that estate short—namely, her second marriage; but if the remainder had been introduced without the words in *italics*, then it would have been a good contingent remainder, and the condition would be viewed as surplusage.—*Fearne's Cont. Rem.* 270. So, if the limitation had been to the widow *durante viduitate*, the remainder would have

been good; as then her death or second marriage would have been the natural period for the determination of her estate. But if the remainder had been introduced by the words, 'from and immediately after the determination of that estate,' it would be liable to objection, on the ground that the remainder-man would be taking advantage of the condition unless the word 'determination' could be construed to refer to the death only of the widow, and not to her second marriage.

But such a remainder is supported, as a conditional limitation, in wills and conveyances under the Statute of Uses.

A remainder is to commence when the particular estate is, from its very nature, to determine; it is, as it were, a continuance of the same estate; it is a part of the same whole. A conditional limitation is not a continuance of the estate first limited, but is entirely a different and separate estate. It is not to commence on the determination of the first, but the first is to determine when the latter commences. It is the commencement of the latter which rescinds and destroys the former, and not the ceasing of the former which gives existence to the latter. The particular estate and remainders are, in fact, as the very terms imply, but one and the same estate. The estate first appointed, and the conditional limitations, are separate and distinct estates. See CONTINGENT REMAINDERS; CROSS REMAINDERS; VESTED REMAINDER.

Remainder-man, a person entitled to an expectant estate. See last title.

Remand, to re-commit, or send back to prison, one charged before a magistrate (see 11 & 12 Vict. c. 42, s. 21, and 11 & 12 Vict. c. 43, s. 16), in the first instance for the sake of allowing further evidence to be collected and adduced at a further hearing.

Remanent, pro defectu emptorum (*they remain unsold for want of buyers*). A sheriff's return to a writ of *fi. fa.*

Remanet, the name given to a cause the trial of which has been postponed from one sittings to another. A new notice of trial is necessary when a cause has been made a *remanet* at the assizes, but not when it has been made a *remanet* from one sittings to another, or has been put off by order of *Nisi Prius.*

Where the cause is made a *remanet*, the costs incurred in bringing up witnesses, etc., are allowed to the party ultimately prevailing.

Remedial statutes, those which are made to supply such defects, and abridge such superfluities in the Common Law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. This being effected either by enlarging the Common Law where it is too narrow and circumscribed, or by restraining it where it is too lax and luxuriant, has occasioned a division of remedial Acts of Parliament into enlarging and restraining statutes.

Remedy, the legal means to recover a right; also, a certain allowance to the master of the mint, for deviation from the standard weight and fineness of coins.—*Encyc. Lond.*

Remembrancer, an officer of the Exchequer. See QUEEN'S REMEMBRANCER.

Remise, to surrender or return; to release.

Remission, a pardon from the Crown, passed under the Great Seal; a release.

Remissius imperanti melius paretur. 3 Inst. 233.—(A man commanding not too strictly is better obeyed.)

Remitment, the act of sending back to custody; an annulment.

Remittance, money sent by one person to another, either in specie, bill of exchange, cheque, or otherwise.

Remittee, the person to whom a remittance is sent.

Remitter: where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title, he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by a bad title is *ipso facto* annexed to his own inherent good one; and his defeasible estate is utterly defeated and annulled by the instantaneous act of law, without his participation or consent. As if A. disseise B., i.e., turn him out of possession, and afterwards demise the land to B. (without deed) for a term of years, by which B. enters, this entry is a remitter to B. who is *in* of his former and surer estate. But if A. had demised to him for years by deed indented, or by matter of record, there B. would not have been remitted. For if a man by deed indented take a lease of his own lands, it shall bind him to the rents and covenants, because a man never can be allowed to affirm that his own deed is ineffectual, since that is the greatest security on which men rely in all manner of contracting. The same law holds, if it had been by matter of record, for that is of its own nature uncontrollable evidence, which a man cannot be allowed to controvert.—3 *Steph. Com.*

Remitting cases to Courts abroad. See FOREIGN LAW.

Remittitur damnum. Where a jury gave greater damages than a plaintiff had declared

for, the mistake might be rectified by entering a *remittitur* for the excess; or, if a plaintiff had signed judgment for the greater sum, the Court would give him leave to amend it, by entering a *remittitur* for the excess, even in a subsequent term and after error brought. The damages were usually remitted in ejectment and replevin where judgment was signed by confession or default.—2 *Chit. Arch. Prac.*, 12th ed., 1517.

Remittitur of record. Formerly when a writ of error in the Exchequer Chamber abated or was discontinued, the transcript must have been remitted, and a *remittitur* entered, before a defendant could sue out execution; but this was afterwards unnecessary, for the record remained in the court below, and execution was, therefore, in all cases, issued out of that court.—*H. T.* 4 *Wm. IV.* r. 16.

Remoteness, want of close connection between a wrong and the injury, as cause and effect, whereby the party injured cannot claim compensation from the wrongdoer. See 2 *Br. & Had. Com.* 335.

Remoto impedimento emergit actio. Wing. 20.—(An impediment being removed, an action emerges.)

Removal of goods to prevent distress. See 9 Anne c. 14, and 11 Geo. II. c. 19, the latter of which, if the removal be fraudulent, allows the landlord to follow and distrain upon the goods for thirty days, wherever they are.

Removal of Pauper. See SETTLEMENT.

Remuneration Order, a short term for the Solicitors' Remuneration Order, 1882. See SOLICITOR.

Renant, or **Reniant** [fr. *negans*, Lat.], denying.—32 *Hen. VIII.* c. 2.

Rencounter, a sudden meeting; as opposed to a duel, which is deliberate.

Render, to yield, give again, or return.

Certain things lie in render, i.e., must be rendered or answered by the tenant, as rents, heriots, and other services.—3 *Steph. Com.*

Renegade [from the Latin *renego*, to renounce], one who has changed his profession of faith or opinion: one who has deserted his church or party.

Renewal of Lease, a re-grant of an expiring lease for a further term. Where a lease contains a covenant by the lessor for renewal, this covenant is commonly subject to the condition that the covenants in the lease shall have been performed by the lessee, and this condition is strongly enforced by the Court. See *Finch* v. *Underwood*, 2 *Ch. D.* 310.

Leases may be surrendered in order to be renewed, without a surrender of under leases, by virtue of 4 Geo. II. c. 28, s. 6, before which Act a surrender of each under-lease was necessary.

Renewal of Writs. It is provided by R. S. C. 1883, Ord. VIII., that no writ of summons shall be in force for more than twelve months; but upon application before the expiration of the twelve months, may be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ.

Renounce, to give up a right. An executor who declines to take probate of the will of his testator is said to *renounce* probate. Where any person, after 1st January, 1858, renounces probate of the will of which he is appointed executor, his right shall wholly cease, and go and devolve as if he had not been appointed.—20 & 21 *Vict.* c. 77, s. 79. Whenever an executor appointed in a will survives the testator, but dies without taking probate, or an executor named in a will is cited to take probate and does not appear, his right shall cease, and go in like manner as if he had not been appointed.—21 & 22 *Vict.* c. 94, s. 16.

Renovant, renewing.—*Cowel.*

Rent [fr. *reditus*, Lat.], a certain profit issuing yearly out of lands and tenements corporeal; it may be regarded as of a two-fold nature; first, as something issuing out of the land, as a compensation for the possession during the term; and secondly, as an acknowledgment made by the tenant to the lord of his fealty or tenure. It must always be a profit, yet there is no necessity that it should be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters, may be, and occasionally are, rendered by way of rent; it may also consist in services or manual operations, as to plough so many acres of ground and the like; which services, in the eye of the law, are profits. The profit must be certain, or that which may be reduced to a certainty by either party; it must issue yearly, though it may be reserved every second, third, or fourth year; it must issue out of the thing granted, and not be part of the land or the thing itself.

There are several kinds of rents, viz.:—

(1) *Rent-service*, so called because it has some corporeal service incident to it, as at the least, fealty.

(2) *Rent-charge*, where the owner of the rent has no future interest or reversion in the land. It is usually created by deed or will, and accompanied with powers of distress and entry. Small rent-charges were frequently granted for the mere purpose of qualifying the grantee for the parliamentary

franchise, as a forty-shilling freeholder, under 8 Hen. VI. c. 7, but this kind of qualification is abolished by the Representation of the People Act, 1884, s. 4.

(3) *Fee farm rent*, one issuing out of an estate in fee, of at least one-fourth of the value of the lands at the time of its reservation.

(4) *Rent-seck*, a barren rent, which is in effect nothing more than a rent reserved by deed or will, but *without* any clause of distress.

(5) *Rents of assize*, the certain established rents of the freeholders, and ancient copyholders of a manor, which cannot be departed from. Those of the freeholders are frequently called:

(*a*) *Chief-rents*, and both sorts are indifferently denominated.

(*b*) *Quit-rents*, because thereby the tenant goes quit and free of all services.

(6) *Rack-rent*, a rent of the full value of the tenement, or near it.

(7) *Fore-hand-rent*, otherwise called rent payable in advance.

Rents-seck, rents of assize, and chief rents are recoverable by distress (4 *Geo. II.*, c. 28, s. 5); and any annual sum charged on land by way of rent-charge or otherwise, not being rent incident to a reversion, by distress and entry under s. 44 of the Conveyancing and Law of Property Act, 1881.

Quit-rents, chief-rents, rent-charges, and other annual sums issuing out of land may, by s. 45 of the same Act, be redeemed on requisition of the owner to the copyhold commissioners, who certify the amount of money to be paid for the redemption.

Rent is not due till midnight of the day upon which it is reserved, although sunset is the time appointed by law to make a proper demand of it, to take advantage of a condition of re-entry or to tender it, in order to save a forfeiture; but, more properly speaking, the demand should be made before sunset, so as to allow sufficient light to count the money; and the person making the demand or tender must remain on the land till the sun has set. Where rent is reserved generally and no mention is made, as is usual, of half-yearly or quarterly payments, nothing is due until the end of the year.

Rent is considered as of a higher nature than even a debt due on an instrument under seal, as between the parties themselves (see *Davis* v. *Gyde*, 2 *A. & E.* 624); and rent in arrear due by the executors of a tenant was, before 32 & 33 Vict. c. 46, of a higher degree than simple contract debts, and of equal degree with specialty debts; but that Act has abolished the priority (see *Shirreff* v. *Hastings*, 6 *Ch. D.* 610).

As to the apportionment of rents, see 33 & 34 Vict. c. 35, and title APPORTIONMENT.

Rent charge. See RENT.

Rental bolls, when the tithes (tiends) have been liquidated and settled for so many bolls of corn yearly.—*Bell's Scotch Law Dict.*

Rental-rights, a species of lease usually granted at a low rent and for life. Tenants under such leases were called *rentalers* or *kindly tenants*.

Rente [Fr.], an annuity. *Rentes* is the term applied to the French Government Funds, and *Rentier* to a fundholder or other person having an income from personal property.

Rente viagère [Fr.], a life annuity.

Renunciation, the act of giving up a right.

Reparatione faciendâ, an ancient writ, which lay in many cases to compel repairs. —*F. N. B.* 127.

Repeal, a revocation or abrogation. Repeal of one Act of Parliament by another is either express or implied, the rule being that a later Act repeals a former one if contradictory thereto. By s. 11 of the Interpretation Act, 1889, re-enacting s. 5 of Lord Brougham's Act, 13 Vict. c. 21, where an Act passed after 1850 repeals a repealing enactment, it does not revive any enactment previously repealed. And by s. 38 of the same Act, where any Act passed after Jan. 1st, 1890, repeals and re-enacts any provisions of a former Act, references in any other Act to the provisions so repealed are to be construed as references to the provisions so re-enacted, as had been already specially provided in the consolidating Public Health Act, 1875, by s. 313, and Factory and Workshop Act, 1878, by s. 102.

Repertory, a classified inventory.

Repetition, a recovery of money paid under mistake.—*Civ. Law.*

Repetitum namium, a second or reciprocal distress, in lieu of the first, which was eloigned.

Repetundæ, or **Pecuniæ repetundæ**, the terms used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *Magistratus*, *Judices*, or *Publici Curatores*, which they had improperly taken or received in the *provinciæ*, or in the *Urbs Roma*, either in the discharge of their *jurisdictio*, or in their capacity of *Judices*, or in respect of any other public function. Sometimes the word *repetundæ* was used to express the illegal act for which compensation was sought, as in the phrase, '*Repetundarum insimulari damnari*'; and *pecuniæ* meant, not only money, but anything that had value. Original inquiry was made into this offence, *extra ordinem ex sena-*

tus consulto, as appears from the case of P. Furius Philus and M. Matienus, who were accused of it by the *Hispani*.—*Smith's Dict. of Antiq.*

Repleader, to plead again.

The motion for a repleader was made when, after issue joined and verdict thereon, the pleading was found (on examination) to have miscarried, and failed to effect its proper object, of raising an apt and material question between the parties. A repleader might become necessary where the issue had been defectively joined.

Replegiare, to redeem a thing detained or taken by another, by giving sureties.

Replegiare de averiis, a writ brought by one whose cattle were distrained or put in pound, on any cause, by any person, on surety given to the sheriff to prosecute or answer an action.—*F. N. B.* 68.

Replegiari facias, the original writ out of Chancery commencing an action of replevin. It was superseded by the Statute of Marlbridge.—52 *Hen. III.* c. 21.

Repletion, where the revenue of a benefice is sufficient to fill or occupy the whole right or title of the graduate who holds it.—*Can. Law.*

Repleviable, or **Replevisable**, that which may be taken back or replevied.

Replevin, a personal action *ex delicto* brought to recover possession of goods unlawfully taken (generally, but not only applicable to the taking of goods distrained for rent), the validity of which taking it is the mode of contesting if the party from whom the goods were taken wishes to have them back in specie, whereas, if he prefer to have damages instead the validity may be contested by action of trespass or unlawful distress. The word means a re-delivery to the owner of the pledge or thing taken in distress. It is re-delivered to him by the registrar of the County Court of the district within which it was taken, upon his giving security to try the validity of the distress or taking, in an action of replevin to be forthwith commenced by him against the distrainer, and prosecuted with effect and without delay either in the County Court or in the High Court, and to restore it if the right be adjudged against him; after which the distrainer may keep it till tender made of sufficient amends, but must then re-deliver it to the owner. Although this action is usually confined to goods, etc., taken in distress, it may be brought for all goods and chattels unlawfully taken. When an Act of Parliament orders a distress and sale of goods it is in the nature of an execution, and this action does not lie, and a replevin of goods seized in order to condemnation would be a contempt of the High Court, for which an attachment would be granted.

It is a general rule that whoever brings replevin ought to have the property of the goods either general or special in him at the time of the taking, and it lies against him who takes the goods and also against him who commands the taking, or against both. Whatever may be distrained may be replevied.

In cases of distress for rent the replevy should be made before the expiration of five days (or fifteen, if the 6th section of the Law of Distress Amendment Act, 1888, applies) after the distress, otherwise the distrainer may sell the goods; though, indeed, they may be replevied at any time before they have been sold. (See *Jacob* v. *King*, 5 *Taunt.* 451.)

An action for replevin may be commenced in the High Court in the form applicable to ordinary actions, and if the replevisor wish to proceed in that court, he must at the time of the replevying give security sufficient to cover the alleged rent or damage for which the distress is made, and the probable costs of the cause, conditioned to commence and prosecute an action of replevin in that court, a week from date, and to prove that he had ground to believe that the title to some hereditament, or to some toll, etc., was in question, or that such rent or damage exceeded 20*l.*, and to make return of the goods, if return adjudged.

The pleas in replevin used to be divided into four sorts:—(1) Pleas in abatement. (2) The plea of *non cepit*. (3) Pleas in justification. (4) Avowries or cognizances.

As replevin by writ has been long obsolete, pleas in abatement have not occurred recently in practice.

The plea of *non cepit* used to be termed the general issue in replevin; but although it was so called, it put in issue only the taking and detention, and not the property.

There were two kinds of pleas in justification—those which disaffirmed property in the plaintiff, and those which affirmed property in the plaintiff—which might occur in the case of a distress being made for personal services on the tenant dying, the replevin being sued out by the executors.

In avowries and cognizances for *rent* was set forth, as in a statement of claim, the nature and merits of the defendant's case, to show that the distress taken by him was lawful, and to entitle him to a judgment *de retorno habendo*. The technical difference between an avowry and cognizance was this: where the action was against the principal or landlord, he made avowry, that is, he avowed taking the distress in his own right; where, on the other hand, it was against the bailiff or servant,

he made cognizance, that is, he acknowledged the taking in right of the principal or landlord; and where it was against both, the one avowed and the other made cognizance.

Replevy, or **Replevish**, to let one to mainprise on surety; also to re-deliver goods which have been distrained to their owner, upon his giving pledges in an action of replevin.

Repliant, or **Replicant**, a litigant who replies, or files, or delivers a replication.

Replication. This was a plaintiff's answer to a defendant's plea, except in replevin, when it was pleaded by the defendant, who is a *quasi* plaintiff, in opposition to the plaintiff's plea in bar. See now REPLY.

Reply, the response of the opening counsel on a trial, which is only allowed when evidence has been given in answer to the case first stated, except in the case of the Crown, which is always entitled to reply. See C. L. P. Act, 1854, s. 18.

Also the pleading of the plaintiff which follows the defendant's statement of his defence or counterclaim (see R. S. C. 1883, Ord. XXIII.), by which a plaintiff must deliver his reply, if any, within twenty-one days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a judge. See ISSUE and PLEADING.

Reporter, a person who reports the decisions upon questions of law in the case adjudged in the several Courts of Law and Equity. See LAW REPORTS.

Report Office, was a department of the Court of Chancery. The suitor's account there is discontinued by the 15 & 16 Vict. c. 87, s. 36. See *Smi. Chi. Pr.* 25.

Reports. 'A report,' says Coke, 'signifyeth a public relation or bringing again to memory of cases judicially argued, debated, resolved, or adjudged in any of the king's courts of justice, together with such causes and reasons as were delivered by the judges.' —*Co. Litt.* 293. See LAW REPORTS.

Also, certificates from the masters of the courts, when the courts make reference to them concerning matters of account, etc.; or from committees of either House of Parliament.

Reports, The. Lord Coke's reports, from 14 Eliz. to 13 Jac. I., which are quoted as 'Rep.' They are divided into thirteen parts, and the modern editions are in six volumes, including the index.

Reposition of the forest, a reputting; a re-afforesting.—*Manw.*

Repositorium, a storehouse or place wherein things are kept; a warehouse.—*Cro. Car.* 555.

Repository, Public, injuries to works of art in such places are punishable by 24 & 25 Vict. c. 97, s. 39.

Representation, standing in the place of another for certain purposes, as heirs, executors, or administrators. See EXECUTOR; KIN. A collateral statement, in insurance, either by parol or in writing, of such facts or circumstances relating to the purposed adventure, and not inserted in the policy, as are necessary for the information of the insurer to enable him to form a just estimate of the risk. Such representations are often the principal inducement to the contract, and afford the best ground upon which the premium can be calculated.—*Encyc. Lond.* Consult *Arn. Mar. Ins.*

Representative, bearing the character or power of another. An heir-at-law or devisee is a real representative; an executor or administrator is a personal representative.

Reprieve [fr. *reprendre*, Fr., to take back], the suspension of the execution of a criminal's sentence.

It may take place (1) *ex mandato reginæ*, at the mere pleasure of the Crown.

Or (2) *ex arbitrio judicis*, either before or after judgment; as, where the judge is not satisfied with the verdict, or the indictment is insufficient, or any favourable circumstances appear in the criminal's character, in order to give time to apply to the Crown for either an absolute or conditional pardon.

Or (3) *ex necessitate legis;* as, where a woman is capitally convicted, and pleads her pregnancy. See JURY WOMEN.

Or (4) if the criminal become *non compos.* —4 *Steph. Com.*

Reprisal, the taking one thing in satisfaction for another. Reprisals are used between nation and nation, in order to do themselves justice, when they cannot otherwise obtain it. If a nation has taken possession of what belongs to another—if she refuses to pay a debt, to repair an injury, or to give adequate satisfaction for it—the latter seizes something belonging to the former, and applies it to her own advantage, unless she obtains payment of what is due to her, together with interest and damages, or may keep it as a pledge until she has received ample satisfaction. For the latter it is rather a stoppage or a seizure than reprisals, but they are frequently confounded in common language. —*Vattel, by Chit.* 283. Reprisals are either *ordinary*, as arresting and taking the goods of merchant-strangers within the realm, or *extraordinary*, as satisfaction out of the realm, and are under the Great Seal.—*Lex Mercat.* 120. Also Recaption, which see. See LETTERS OF MARQUE, and CAPIAS IN WITHERNAM; *Steph. Com.*, 7th ed., ii. 527; iii. 354, 538.

Reprises, deductions and payments out of a manor or lands, as rent charges, annuities, etc.—*Cowel.*

Reprobation, the propounding of exceptions either to facts, persons, or things.—*Eccl. Law.*

Rep-silver, money anciently paid by servile tenants to their lord, to be quit of the duty of reaping his corn.—*Cowel.*

Republication of Wills, a second publication after cancelling or revoking.

'No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner by the Wills Act required, and showing an intention to revive the same, and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.'—7 *Wm. IV.* and 1 *Vict.* c. 26, s. 22. Every will re-executed, or republished, or revived by any codicil, shall for the purposes of the Wills Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived (s. 34).—1 *Steph. Com.*

Repudiation, the putting away of a wife or of a woman betrothed; (2) the renunciation of a right or obligation (which renders the repudiator liable to be sued for breach of contract); (3) the refusal to accept a benefice.

Repugnant, that which is contrary to what is stated before, or insensible. A repugnant condition is void.

Reputation, credit, honour, character, good name. Injuries to one's reputation, which is a personal right, are defamatory and malicious words, libels, malicious indictments, or prosecutions.

Reputatio est vulgaris opinio ubi non est veritas. Et vulgaris opinio est duplex: scil. —Opinio vulgaris orta inter graves et discretos homines, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis. 4 Co. 107.—(Reputation is common opinion where there is not truth. And common opinion is of two kinds: to wit, common reputation arising among grave and sensible men, and which has the appearance of truth; and mere opinion arising among foolish and ignorant men, without any appearance of truth.)

Reputed owner, one who has, to all appearances, the right and actual possession of property. By the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 44,—an enactment which repeats with little variation the successive enactments on the subject dating from the reign of James I.,—it is provided that all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is reputed owner thereof, pass to his trustee.

Request-notes, applications to obtain a permit for removing excisable articles.

Requests, Courts of, tribunals of a special jurisdiction for the recovery of small demands, which are abolished by the County Court Act, 1846 (9 & 10 Vict. c. 95), and Order in Council, 9th May, 1847, with a few exceptions. There was a court of requests, of the king in person, which was virtually abolished by 16 Car. I. c. 10.—3 *Steph. Com.*

Request, Letters of. Many suits are brought before the Dean of Arches as original judge, the cognizance of which properly belongs to inferior jurisdictions within the province, but in respect of which the inferior judge has waived his jurisdiction under a certain form of proceeding known in the canon law by the denomination of Letters of Request.—3 *Steph. Com.*

Requisition, made by a creditor, that a debt be paid or an obligation fulfilled.—*Bell's Scotch Law Dict.*

Requisitions of Title, a series of inquiries and requests which arise upon a title on behalf of a proposed purchaser, and which the vendor is called upon to satisfy and comply with. They are often curtailed by the conditions of sale. Consult *Sugden* or *Dart's V. and P.*

Rere-fiefs, inferior feudatories in Scotland. —1 *Steph. Com.*

Rerum ordo confunditur si unicuique jurisdictio non servetur. 4 Inst. Procem.—(The order of things is confounded if every one preserve not his jurisdiction.)

Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt. 6 Co. 40.—(The progress of events shows many things which, at the beginning, could not be guarded against or foreseen.) Thus, according to Coke, 'many mischiefs arise on the change of a maxim and rule of the Common Law, which those who altered it could not see when they made the change.'

Rerum suarum quilibet est moderator et arbiter. Co. Litt. 223.—(Every one is the moderator and arbiter of his own affairs.)

Res accessoria sequitur rem principalem. Broom's Leg. Max., 6th ed., 457.—(The accessory follows the principal.)

Re-sale, a second sale.

Res, all physical and metaphysical existences, in which persons may claim a right. See *Sand. Just.*, 6th ed., 88; and *Cum. C. L.* 59.

Resceit, or **Receit** [fr. *receptio*, Lat.], an admission or receiving of a third person to plead his right in a cause already commenced between two other persons.—13 *Rich. II.* c. 17.

Resceit of homage, the lord's receiving homage of his tenant at his admission to the land.—*Kitch.* 148.

Rescission, annulment or destruction.

Rescissory action, one to rescind or annul a deed or contract.—*Scotch Law.*

Rescous (*a taking away*), from recourser, to recover; the old mode of spelling rescue, which see.

Rescript, the answer of the Roman emperor when consulted by particular persons on some difficult question; it is equivalent to an edict or decree; a counterpart.

Rescriptum principis contra jus non valet. Reg. Civ. Dur.—(The prince's rescript avails not against law.)

Rescue of distress, the taking away and setting at liberty, against law, a distress effected. Rescue lies where a person distrains for rent or services, or for damage feasant, and is desirous of impounding the distress, and another person rescues the distress from him. The party distraining must be in possession of the distress, otherwise there cannot be a rescue.

The action of rescue has fallen into disuse; the usual remedy is by an action on the case, under 2 W. & M. sess. 1, c. 5, s. 4, which gives treble damages to the person grieved. When a distress is taken without cause, or contrary to law, the tenant may lawfully make rescue before it is impounded, for then it is deemed to be in the custody of the law. The 6 & 7 Vict. c. 30 gives a summary remedy for pound breach and rescue in certain cases after a distress for damage feasant.—3 *Steph. Com.*

Rescue of a prisoner. A rescue of one apprehended for felony is felony; for treason, treason; and for a misdemeanour, a misdemeanour.—4 *Steph. Com.*, 7th ed., 225, n., 230; and see 1 & 2 Geo. IV. c. 88. Aiding a prisoner to escape is felony by the Prison Act, 1865, 28 & 29 Vict. c. 126, s. 37.

Rescussor, the party making a rescue.

Res denominatur à principali parte. 9 Rep. 47.—(The thing is named from its principal part.)

Resealing writ, the second sealing of a writ by a master so as to continue it, or to cure it of an irregularity.

Res est misera ubi jus est vagum et incertum. 2 Salk. 512.—(It is a wretched state of things when law is vague and mutable.)

Reservatio non debet esse de proficuis ipsis, quia ea conceduntur, sed de reditu novo extra proficua. Co. Litt. 142.—(A reservation ought not to be of the profits themselves, because they are granted, but from the new rent apart from the profits.)

Reservation, a keeping aside or providing.

Reserve force. The Reserve Forces Act, 1882, 45 & 46 Vict. c. 48, repealing and consolidating the prior Acts on the subject, of which the principal were 30 & 31 Vict. c. 110, and 30 & 31 Vict. c. 111 (which provided for a reserve force of men in the militia to join Her Majesty's army in time of war), established an 'Army Reserve' and a 'Militia Reserve.' By s. 5 a Secretary of State 'at any time when occasion appears to require' may call out the whole or part of the Army Reserve 'to aid the civil power in the preservation of the public peace.' And see 16 & 17 Vict. c. 73, and also the Naval Artillery Volunteer Act, 36 & 37 Vict. c. 77, and the National Defence Act, 1888, 51 & 52 Vict. c. 31.

Reserving points of law. It was long the practice for a judge at the assizes to reserve points of law for consideration by the full court (for which he was sitting as Commissioner) at Westminster, and this practice, recognized by s. 34 of the Common Law Procedure Act, 1854, which conferred a right of appeal, was kept up by s. 46 of the Judicature Act, 1873, and R. S. C., Ord. XXXVI., r. 22, of the Rules of 1875. But s. 17 of the Appellate Jurisdiction Act, 1876, and R.S.C., Ord. XXXVI., r. 22 *a*, substituted for this procedure the argument of the point on 'further consideration' before the judge himself, and this is kept up by R. S. C. 1883, Ord. XXXVI., r. 39.

As to the reserving points of law at sessions or assizes, see 11 & 12 Vict. c. 78, Judicature Act, 1873, s. 47, and Judicature Act, 1875, s. 19; and see title CROWN CASES RESERVED.

Reserving question of law, at sessions or assizes. See 11 & 12 Vict. c. 78, and *suprà.*

Reservoirs. The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877, 40 & 41 Vict. c. 31, gives limited owners power to form reservoirs and to charge their estates with the expense.

Reset, the receiving or harbouring an outlawed person.—*Cowel.*

Reset of theft, the feloniously receiving and keeping of stolen property, with knowledge of the theft.—*Scotch phrase.*

Res generalem habet significationem quia tam corporea quam incorporea, cujuscunque sunt generis, naturæ, sive speciei, comprehendit. 3 Inst. 182.—(The word 'thing' has a general signification, because it comprehends corporeal

and incorporeal objects, of whatever nature, sort, or species.)

Res gestæ, the things done (including words spoken) in the course of a transaction. The phrase is commonly used in connection with evidence, and the admissibility in evidence of words spoken, e.g., the cries of a woman who is being ravished.

Resiance, residence, abode, or continuance.

Resiant rolls, those containing the resiants in a tithing, etc., which are to be called over by the steward on holding courts-leet.

Residence, abode; also the continuance of a parson or vicar on his benefice. It is upon the supposition of residence that the law styles every parochial minister an incumbent.

By 1 & 2 Vict. c. 106, repealing the former acts, every spiritual person (with exceptions for heads of houses in the universities and others) holding a benefice, which comprises all parochial churches, perpetual curacies, chapels, and church or chapel districts, if with cure of souls, shall reside on his benefice, in the house of residence; and if he absent himself (without license from the bishop, grantable by s. 43 for incapacity of mind or body, or illness of wife or child for six months) for more than three months in any year, he shall forfeit, unless resident at some other of his benefices, a certain portion of the value of his benefice. It is further provided that annual returns of residents and non-residents shall be made to Her Majesty in Council; and that in case of non-residence, the bishop, instead of enforcing the penalties, may issue a monition to be followed up by an order to reside; and in case of non-compliance, may sequester the profits of the benefice, and apply them to the purposes in the Act specified.

Under the Penalties Act of 1885, the inadequate performance of ecclesiastical duties may be inquired into by the Commissioners, and (s. 12) a non-resident incumbent may not return without the bishop's permission, until the expiration of his license, nor interfere with the discharge of the duties of the benefice so entrusted to the curate, if he be non-resident for more than twelve months.

Residence of party to an action. See INDORSEMENT OF ADDRESS.

Resident, an agent, minister, or officer residing in any distant place with the dignity of an ambassador. Residents are a class of public ministers inferior to ambassadors and envoys; but, like them, they are under the protection of the law of nations.—*Encyc. Lond.*

Also, a tenant, who was obliged to reside on his lord's land, and not to depart from the same; called also, *homme levant et couchant*, and in Normandy, *resseant du fief*.—*Leg. H. I.*

Residual, or **Residuary**, relating to the residue; relating to the part remaining.

Residuary devisee, the person named in a will who is to take all the real property remaining over and above the other devises.

It is provided by 1 Vict. c. 26, s. 35, 'that unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.'

Residuary legatee, the person to whom the surplus of the personal estate, after the discharge of all debts and particular legacies, is left by the testator's will.

Residue, the surplus of a testator's or intestate's estate after discharging all his liabilities. Unless it appear in the will that the executor was intended to have the residue, he will be deemed by a court of equity to be trustee for the next of kin (11 Geo. IV. and 1 Wm. IV. c. 40). The distribution of the surplusage of intestate's estate is provided for by the 'Statute of Distributions,' 22 & 23 Car. II. c. 10, explained by 29 Car. II. c. 3; and 1 Jac. II. c. 17.—2 *Steph. Com.*

Resignatio est juris proprii spontanea refutatio. Godb. 284.—(Resignation is a spontaneous relinquishment of one's own right.)

Resignation, the giving up a claim, office, or possession; also, the yielding up a benefice into the hands of the ordinary, called by the canonists renunciation; and though it is synonymous with surrender, yet it is by use restrained to yielding up a spiritual living to the bishop, as surrender is the giving up of temporal land into the hands of the lord.

A covenant to resign a living on request given to the patron before and in consideration of presentation thereto, was formerly simoniacal, and, therefore, illegal (see *Fletcher* v. *Lord Sondes*, 3 *Bing.* 501), but by 9 Geo. IV. c. 94, every engagement for the resignation of any living 'to the intent, manifested by the engagement, that any *one person whosoever*, specially named therein, or *one or* (*sic*) *two persons* specially named, each of them by blood or marriage, an uncle, son, grandson, brother, nephew, or grandnephew of the patron, shall be presented' to the living is made valid.

By 'The Incumbents' Resignation Act, 1871' (34 & 35 Vict. c. 44), provisions are made enabling the incumbent of any benefice,

provided he has been the incumbent of such benefice for seven years continuously, to resign on the ground of incapacity by permanent mental or bodily infirmity from the due performance of his duties, and to obtain a pension, not exceeding one-third part of the annual value of the benefice resigned, to be a charge on such benefice.

The resignation of infirm bishops is provided for by 32 & 33 Vict. c. 111, a temporary Act made perpetual by 38 & 39 Vict. c. 19. The annual pension is one-third of the revenues of the see, or two thousand pounds.

The resignation by writing and on payment of a fine, of corporate offices under the Municipal Corporations Act, 1882, is provided for by s. 36 of that Act.

Resignee, one in favour of whom a resignation is made.

Res integra, a point not covered by the authority of a decided case, so that a judge may decide it upon principle alone.

Res inter alios acta alteri nocere non debet (*a transaction between strangers ought not to injure a party*), e.g., the sworn evidence of a witness in one cause cannot be made available in another cause between other parties. Consult *Best on Evidence*, bk. 3, pt. 2, ch. 5.

Res ipsa loquitur (*the thing speaks for itself*), a phrase used in actions for injury by negligence where no proof of negligence is required beyond the accident itself, which is such as necessarily to involve negligence, e.g., a collision between two trains upon a railway. —*Skinner* v. *London, Brighton, and South Coast R. Co.*, 5 *Ex.* 787.

Res judicata, a point already decided by authority. See ESTOPPEL.

Res judicata pro veritate accipitur. Co. Litt. 103.—(A thing adjudicated is received as true.) See *Broom's Leg. Max.*, 6th ed., 317, 320.

Res mancipî, things which might be sold and alienated.—*Civ. Law.*

Res nova, a matter not yet decided.

Res nullius (*a thing which has not an owner*).

Resolution, a solemn judgment or decision; a revocation of a contract.

Resoluto jure concedentis resolvitur jus concessum. Mackeld. Civ. Law, 179.—(The grant of any right comes to an end on the termination of the right of the grantor.)

Resolutory condition, one the accomplishment of which revokes a prior obligation.

Resort. A court whose decision is for the particular case before it final and without appeal, is, in reference to that case, said to be a Court of Last Resort. The House of Lords has been especially so spoken of.

As to place of public resort, see REFRESHMENT HOUSE.

Respectu computi vicecomitis habendo, a writ for respiting a sheriff's account addressed to the treasurer and barons of the Exchequer. —*Reg. Orig.* 139.

Respectum, Challenge propter. See JURY.

Res perit domino. The loss falls on the owner. For illustrations of this maxim, see *Broom's Leg. Max.*, 6th ed., 234.

Res per pecuniam æstimatur et non pecunia per rem. 9 Co. 76.—(The value of a thing is estimated according to its worth in money; but the value of money is not estimated by reference to a thing.)

Respiciendum est judicanti, ne quid aut durius aut remissius constituatur quam causa deposcit; nec enim aut severitatis aut clementiæ gloria affectanda est. 3 Inst.—(The judge must see that no order be made, or judgment given, or sentence passed either more harshly or more mildly than the case requires; he must not seek renown, either as a severe or as a tender-hearted judge.)

Respite (*v.a.*), to postpone—thus, to enter and respite an appeal is to enter the same, and postpone the hearing to a future day. —Consult *Pritch. on Q. Sess.*

Also, interval, reprieve, suspension of a capital sentence, a delay, forbearance, or continuation of time.

There are respite of execution, of debt, of homage, and of a jury.

Respondeat ouster (*let him answer over*). If a demurrer is joined in a plea to the jurisdiction, person, or writ, etc., and it be judged that the defendant put in a more substantial plea, interlocutory judgment is given that he shall answer. Also, if a prisoner fail upon a plea in bar, he has judgment of *respondeat ouster*, and may plead over to the offence the general issue, not guilty.—*Steph. Com.*, 7th ed., iii., 569; iv. 405.

Respondeat raptor, qui ignorare non potuit quod pupillum alienum abduxit. Hob. 99.—(Let the ravisher answer, for he cannot be ignorant that he has taken away another's ward.)

Respondeat superior. 4 Inst. 114.—(Let the principal be held responsible.) The person directing an unlawful act to be done by his servant or agent is answerable as if he had done the act with his own hand. See *Broom's Leg. Max.*, 6th ed., 798.

Respondent, an answer in a suit, whether for himself or another; the defendant in an appeal; the defendant in a suit in the Court for Divorce, etc.

Respondentia, money which is borrowed not upon the vessel, as in bottomry, but upon the goods and merchandise contained

in it, which must necessarily be sold or exchanged in the course of the voyage; in which case the borrower personally is bound to answer the contract.—7 *Geo. I.* c. 21, s. 2; 19 *Geo. II.* c. 37, s. 5; 3 *Br. & Had. Com.*, 209 *et seq.*

Respondere non debet [Lat.] (*he ought not to answer*).

Responsa prudentum, the opinions and decisions of learned lawyers, forming part of the Roman laws.—*Cum. C. L.* 6.

Responsalis ad lucrandum vel petendum, he who appears and answers for another in court at a day assigned; a proctor, attorney, or deputy.—1 *Reeves*, 169.

Res profectò stulta est nequitiæ modus. 11 Co. 8 b.—(There is no mean in wickedness.)

Resseiser, the taking of lands into the hands of the Crown, where a general livery or *ouster le main* was formerly misused.—*Staundf. Prærog.*

Res sua nemini servit. See 4 Macq. H. L. Ca. 151.—(No one can have a servitude over his own property.)

Re-stamping writ, passing it a second time through the proper office, whereupon it receives a new stamp.—1 *Ch. Arch. Prac.*, 12th ed., 212.

Restaur, or **Restor,** the remedy or recourse which assurers have against each other, according to the date of their assurances; or against the master, if the loss arise through his default, as through ill loading, want of caulking, or want of having the vessel tight; also, the remedy or recourse a person has against his guarantee or other person, who is to indemnify him from any damage sustained. —*Encyc. Lond.*

Restitutio in integrum, the rescinding of a contract or transaction, so as to place the parties to it in the same position, with respect to one another, which they occupied before the contract was made, or the transaction took place. The *restitutio* here spoken of is founded on the edict. If the contract or transaction is such as not to be valid, according to the *jus civile* this *restitutio* is not needed, and it only applies to cases of contracts and transactions, which are not in their nature or form invalid. In order to entitle a person to the *restitutio*, he must have sustained some injury capable of being estimated, in consequence of the contract or transaction, and not through any fault of his own, except in the case of one who is *minor xxv. annorum*, who was protected by the *restitutio* against the consequences of his own carelessness.

The following are the chief cases in which a *restitutio* might be decreed:—

The case of *vis et metus.* When a man had acted under the influence of force or reasonable fear, caused by the acts of the other party, he had an *actio quod metus causâ*, for restitution, against the party who was the wrongdoer; and also against an innocent person, who was in possession of that which had thus illegally been got from him; and also against the *heredes* of the wrongdoer, if they were enriched by being his *heredes.* If he were sued in respect of the transaction, he could defend himself by an *exceptio quod metus causâ.* The *actio quod metus* was given by the *prætor*, L. Octavius, a contemporary of Cicero.

The case of *dolus.* When a man was fraudulently induced to become a party to a transaction, which was legal in all respects saving the fraud, he had his *actio de dolo malo* against the guilty person and his *heredes*, so far as they were made richer by the fraud, for the restoration of the thing of which he had been defrauded; and if that were not possible, for compensation. Against a third party, who was in *bonâ fide* possession of the thing, he had no action. If he were sued in respect of the transaction, he could defend himself by the *exceptio doli mali.*

The case of *minores xxv. annorum.* A minor could by himself do no legal act, for which the assent of a *tutor* or *curator* was required; and, therefore, if he did such act by himself, no *restitutio* was necessary. If the *tutor* had given his *auctoritas* or the *curator* his assent, the transaction was legally binding; but yet the minor could claim *restitutio* if he had sustained injury by the transaction.

There were, however, cases in which *minores* could obtain no *restitutio*; for instance, when a minor with a fraudulent design gave himself out to be a major, when he confirmed the transaction after coming of age, and in other cases.

The case of *absentia*, which comprehends not merely absence in the ordinary sense of the word, but absence owing to madness or imprisonment, and the like causes.

The case of error. Mistake comprehends such error as cannot be imputed to blame; and in such a case a man could always have *restitutio* when another was enriched by his loss.

The case of *alienatio in fraudem creditorum facta* (*Dig.* 42, tit. 8). When a man was insolvent (*non solvendo*), and alienated his property for the purpose of injuring his creditors, the prætor's edict gave the creditors a remedy.

In the imperial times, *restitutio* was also applied to the remission of a punishment (*Tac. Ann.* xiv. 12; *Plin. Ep.* x. 64, 65; *Dig.* xlviii. tit. 19, s. 27], which could only

be done by the imperial grace.—*Smith's Dict. Antiq.; Sand. Just.*, 7th ed., 48, 74, 219.

Restitution, the restoring anything unjustly taken from another; also, putting in possession of lands or tenements him who had been unlawfully disseised of them; a person being attainted of treason, etc., he or his heirs may be restored to his lands, etc., by royal charter of pardon.

Restitution of conjugal rights, a species of matrimonial cause, which is brought whenever the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason, in which case the Divorce and Matrimonial Court will grant a decree for restitution of conjugal rights, enforceable by attachment (see *Weldon* v. *Weldon*, 9 *P. D.* 52) until the passing of the Matrimonial Causes Act, 1884, by which an order for periodical payments by the husband to the wife, or for the settlement of the wife's property or some part thereof on the husband, is substituted for attachment.

Restitution of minors, a restoring them to rights lost by deeds executed during their minority.—*Scotch Law.*

Restitution of stolen goods. By the Common Law there was no restitution of goods upon an indictment, because it is at the suit of the Crown only, therefore the party was enforced to bring an appeal of robbery in order to have his goods again; but a writ of restitution was authorised to be granted by 21 Hen. VIII. c. 11, and it became the practice of the Court, upon the conviction of a felon, to order, without any writ, immediate restitution of such goods as were brought into court to be made to the several prosecutors. The Larceny Act, 24 & 25 Vict. c. 96, s. 100, gives power to the Court to award from time to time writs of restitution for stolen property, or to order the restitution thereof in a summary manner, upon a conviction of the guilty party upon an indictment by or on behalf of the owner. This restitution reaches the stolen goods (unless they be negotiable instruments) notwithstanding that the guilty party may have sold them for value to an innocent purchaser; but by 30 & 31 Vict. c. 35, s. 9, a sum not exceeding the proceeds of such sale out of moneys taken from the guilty party on his apprehension may be delivered to such innocent purchaser.

Restitution, Writ of. If the judgment below was reversed in a court of error, the plaintiff in error might have had a writ of restitution in order that he might be restored to all he had lost by the judgment. If execution on the former judgment had been actually executed, and the money paid over, the writ of restitution issued without any previous *scire facias*, but if the money had not been paid over, a *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, etc., must have previously issued. Error, however, is now abolished (Jud. Act, 1875, Ord. LVIII., r. 1).

And, generally, if money, etc., be levied under a writ of execution, and the judgment be afterwards reversed or set aside, the party against whom the execution was sued out may have this writ of restitution; but where the judgment is set aside for irregularity, etc., restitution (when necessary) forms part of the rule; and if the goods or money be not restored, the Court will grant an attachment. A writ of restitution may also be awarded when a judgment in ejectment is upset. *Re-restitution* takes place when there has been a writ of restitution before granted; and restitution is generally a matter of duty, but re-restitution is matter of grace.—*Raym.* 35.

The writ in this second sense would seem to be still in force. See note at head of Jud. Act, 1875, sched. 1.

Restitutione extracti ab ecclesiâ, a writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony.—*Reg. Orig.* 69.

Restitutione temporalium, a writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed.—*F. N. B.* 169.

Restraining Order. The 5th Vict. c. 5, s. 4, extended the preventive powers of Chancery by giving its judges authority, upon the application of any party interested, by motion or petition, supported by an affidavit of necessity, without bill filed, to restrain the Bank of England, or other public company incorporated or not, from permitting the transfer of stock in the public funds, or stock or shares in any public company, standing in the name of any person or body politic or corporate, in the books of the bank of England, or of any public company, or from paying any dividends due or to become due; and by directing that every such order must specify the amount of the stock or shares to be affected thereby, and the names of the persons, body politic or corporate, in which the same stand. The Court had power, upon the application of any party interested, to discharge or vary such order, and to award costs.

The restraining order continued in force until discharged; but as this order was intended for interim purposes only, it would be discharged if a bill were not filed within a reasonable period. Obedience to the order is enforced by contempt.

Restraining statutes, those which restrict previous rights and powers, as 1 Eliz. c. 19; 13 Eliz. cc. 10, 20; 14 Eliz. c. 11; 18 Eliz. cc. 6, 11; and 43 Eliz. c. 9, restraining bishops and others from granting leases binding on their successors for more than a limited time. See 5 *Reeves*, c. xxiii., 26.

Restraint of Marriage. On the grounds of public policy, conditions attached to gifts or bequests to a person *who has never been married*, if in *general* restraint of marriage are void, i.e., the donee or legatee takes the gift or bequests whether he or she marry or not; but a condition in restraint of the second marriage, whether of a man or woman, is not void (see *Allen* v. *Jackson*, 1 *Ch. D.* 399), and a condition is good if the restraint be *partial* only, e.g., if there be a bequest, with a gift over, if the legatee should marry a Roman Catholic, or a particular person, or without a particular person's consent.

Restraint of Trade. Contracts in general restraint of trade, that is, that a party shall not carry on a particular trade at all, are void on the ground of public policy (*Mitchel* v. *Reynolds*, 1 *Sm. L. C.*), but contracts in partial restraint of trade, that is, where the restraint is limited to a particular time or area, are good, if made (although by deed) upon a consideration, and reasonable.

Restrictive Indorsement, one prohibiting the further negotiation of a bill of exchange or promissory note, or cheque, or expressing that 'it is a mere authority to deal with the bill, etc., as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill be endorsed "pay D. only," or "pay D. for the account of X.," or "pay D. or order for collection."'—*Bills of Exchange Act*, 1882, 45 & 46 *Vict.* c. 61, s. 35.

Resulting trust, one that arises from the operation or construction of equity, and in pursuance of the rule that trusts result to the person from whom the consideration moves, of which the following are instances:—

(1) Upon a contract to purchase a real estate, a trust immediately results to the vendee, since equity looks upon things agreed to be done as actually performed.

(2) Where a purchase is made in the name of one, and the consideration is given, or paid by another, a trust results in favour of the latter, though there be no express declaration for the purpose; but not so if the purchase-money were paid by several, for that would be to introduce all the mischiefs which the Statute of Frauds was intended to prevent. There must then be a written declaration of trust. To raise a trust of this kind, the fact of the ownership of the money should appear upon the face of the deed, either by a recital, or by expressions which amount to a necessary implication, or presumptive proof of it.

(3) A purchase by a trustee with the trust-money, will raise a resulting trust to the person entitled to such money.

(4) A conveyance to a man, without consideration, raises a resulting trust for the original owner.

(5) Where a trust is declared in part of an estate only, what remains undisposed of results to the grantor of his heir-at-law.

(6) When the trusts created cannot take effect, a trust will result to the original owner or his heir.

(7) Where a conveyance is made to trustees, upon such trusts, and for such intents and purposes as A. shall appoint, and A. never appoints, the trust results to him and his heirs.

(8) If a trustee renew a lease in his own name, such lease will be subject to the trust affecting the old lease.

(9) Where there is fraud in obtaining a conveyance, the grantee will be held, in equity, a trustee for the person defrauded.

(10) Where a son is married in the lifetime of his father, and by him fully advanced and emancipated, a purchase by the father in the name of his son may be a trust for the father, as much as if it had been in the name of a stranger; because, in that case, all presumptions and obligations of advancement cease. But where the son is not advanced, or but advanced or emancipated in part, there is no room for any construction of a trust by implication; and without clear proof to the contrary, it ought to be taken as an advancement of the son, although the father take the possession, and receive the rents and profits. If a grandfather purchase lands in the name of his grandchild, the father being dead, it is an advancement and not a trust; for the grandfather is *in loco parentis*. And it is the same, if a father purchase in the names of his son and a trustee, or in the names of himself and son; but, in this case, a moiety of the estate will be subject to the father's debts.

Resulting use, an implied use.

A resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration nor evidence of intent to direct the use; the use then remains in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transfers the legal estate to such resulting use.

If the intent of the parties that the use should not result be plainly manifested, it will remain in the persons to whom the legal estate is limited. Parol evidence is admissible

to show this intent, for the Statute of Frauds requiring declaration of uses to be in writing and signed by the party, extends, in cases of conveyances to uses, to third persons only, and not to the persons conveying or those to whom lands are conveyed to uses.—29 *Car. II.* c. 3, s. 8; but see *Lamplugh* v. *Lamplugh*, 1 *P. Wms.* 112.

The doctrine of resulting uses extends only to those cases where an estate in fee-simple passes; it is not applicable where an estate-tail, an estate for life, or an estate for years is granted; for a consideration or declaration of the use prevents its resulting, and a tenure is a consideration, in consequence of the rent or service which it includes; a use, therefore, cannot result on the conveyance of a particular estate, i.e., an estate less than fee simple.

When any particular uses are declared, which do not exhaust the whole estate, so much of the use as the owner of the lands does not dispose of remains in him. The operation of this rule takes place in transfers, operating by non-transmutation of possession; that part of the use undisposed of by the bargainor or covenantor is retained by him as his old estate, and is denominated a use by implication; e.g., if D. covenant to stand seised to the use of his heirs male, begotten or to be begotten, D. takes an estate for life by implication, for it is impossible for him to have any such heirs during his life, consequently the use undisposed of during his life remains in D.—*Pybus* v. *Mitford*, 1 *Vent.* 327. Neither resulting uses nor uses by implication can ever arise to any person other than the original owner of the estate.

And where a use is expressly limited to the owner of the estate, he will not be allowed to take any resulting or implied use inconsistent with the use limited to him.

Re-summons, a second summons, calling upon a person to answer an action where the first summons is defeated. Obsolete. As to re-summons in claims of conusance, see 2 *Ch. Arch. Pr.*, 12th ed., 1347.

Resumption, the taking again by the Crown of such lands or tenements, etc., as on false suggestion had been granted by letters-patent.—*Broke*, 291.

Res Universitatis, properly belonging to a city or municipal corporation.

Retail, to sell goods in small parcels and not in gross. For the purpose of the Licensing Acts, retail of spirits is a sale of less than two gallons (Spirits Act, 1880, 43 & 44 Vict. c. 24, s. 104), of wine, of less than two gallons, or one dozen quart bottles (23 Vict. c. 27, s. 4), and of beer or cider, of less than four gallons and a half (4 & 5 Wm. IV. c. 85, s. 19).

Retainer. (1) The contract between client and solicitor or between solicitor and counsel for their professional services: the contract that such services shall not be given to the opposite party; (2) a document given by a solicitor to counsel, engaging the person who receives it to appear for a party, either in some particular suit or action in prospect (which is called a *special* retainer), or in all matters of litigation in which such party may at any time be involved; this is called a *general* retainer. The latter operates until it is revoked, but if any case arises in which the counsel retained is not instructed to appear when the case is actually tried, he is at liberty to regard the retainers as cancelled. General retainers are more commonly given on behalf of corporations and public companies than of individuals.

(3) A servant who does not continually dwell in his master's abode, but only wears his livery, and attends sometimes upon special occasions.

Retainer of debts. Among debtors of equal degree an executor or administrator is allowed to pay himself first, by retaining in his hands so much as his debt amounts to.—2 *Wms. Exs.*, 7th ed., 1039 *et seq.*; 2 *Br. & Had. Com.* 656.

Retaining fee [fr. *merces retinens*, Lat.], a preliminary fee given to a counsel, along with the retainer, in order to insure his advocacy.

Retaliation, the *lex talionis*, which see.

Retenementum, detaining, withholding, or keeping back.—*Cowel.*

Retention (Scotch Law), the right of withholding a debt or retaining property until a debt due to the person claiming the right of retention shall be paid; a lien.

Retinentia, a retinue, or persons retained by a prince or nobleman.—*Cowel.*

Retiring a bill, taking up and paying a bill of exchange when due.—*Byles on Bills*, 14th ed., 298.

Retorna brevium, the returns of writs.

Retorno habendo, when the defendant has judgment in replevin for the return of the goods, there issues in his favour a writ *de retorno habendo*, whereby the goods are returned again into his custody, to be sold or otherwise disposed of, as if no replevin had been made. See REPLEVIN.

Retorsion, retaliation.

Retour, an extract from the Chancery of the service of an heir to his ancestor.—*Bell's Scotch Law Dict.*

Retour sans protêt [Fr.] (*return without protest*), a request or direction by a drawer of a bill of exchange, that should the bill

be dishonoured by the drawee, it may be returned without protest or without expense (*sans frais*).—*Byles on Bills*, 14th ed., 216.

Retractus aquæ, the ebb or return of a tide.—*Cowel.*

Retraxit (*he has withdrawn*), a proceeding somewhat similar to a *nolle prosequi*, except that a *retraxit* was a bar to any future action for the same cause, whereas a *nolle prosequi* is not, unless made after judgment. The former is made in person, in open court, when the trial is called on; the retraxit was made by a mere entry on the roll out of court.—See *Herbert* v. *Sayer*, 2 *D. & L.* 65.

This proceeding has been for a long time unusual in practice.—2 *Chit. Arch. Prac.*, 12th ed., 1515. See title DISCONTINUANCE.

Retrocession, a re-assignment of inheritable rights to the cedent or original assignor.—*Civ. Law.*

Rette, a charge or accusation.—*Co. Litt.* 173 b.

Return-days. These were certain days in term for the return of writs.—1 *Chit. Arch. Prac.*, 12 ed., 160.

Returning Officer, the official who conducts an election; in the case of parliamentary elections, the sheriff in counties, and the mayor in boroughs.—2 *Wm. IV.* c. 45, s. 11; and 5 & 6 *Wm. IV.* c. 76, s. 57. See 6 Vict. c. 18, s. 104; 16 & 17 Vict. c. 68; 17 & 18 Vict. c. 102; 30 & 31 Vict. c. 47 *et seq.*; 31 & 32 Vict. c. 58, s. 33 *et seq.*, and as to appointment of deputy in divided boroughs, see s. 13 of the Redistribution of Seats Act, 1885, 48 & 49 Vict. c. 23. As to an action against him, see 31 & 32 Vict. c. 125, s. 48. The expenses of Returning Officers are regulated by 38 & 39 Vict. c. 84, and its amending Act of 1886, 49 & 50 Vict. c. 57.

Returning from transportation, coming back to this country before the term of punishment is determined. It was an offence against public justice.—4 & 5 *Wm. IV.* c. 67. The punishment of transportation is abolished. See PENAL SERVITUDE.

Returno habendo. See RETORNO HABENDO.

Returnum averiorum, a judicial writ, similar to the *retorno habendo.*—*Cowel.*

Returnum irreplegiabile, a judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; it is granted after a nonsuit in a second deliverance.—*Reg. Judic.* 27.

Reus, *a defendant*, properly the debtor to whom the question was put. *Rei*, the parties or litigants.—*Cum. C. L.* 251.

Reve, or **Greve**, the bailiff of a franchise or manor, an officer in parishes within forests, who marks the commonable cattle.—*Cowel.*

Revelach, rebellion.—*Domesday.*

Reveland, the land which in Domesday is said to have been thane-land, and afterwards converted into reveland. It seems to have been land which having reverted to the king after the death of the thane, who had it for life, was not granted out to any by the king, but rested in charge upon the account of the reve or bailiff of the manor.—*Spelm. Feuds*, c. 24.

Revels, sports of dancing, masking, etc., formerly used in princes' courts, the inns of court, and noblemen's houses, commonly performed by night; there was an officer to order and supervise them, who was entitled the Master of the Revels.—*Cowel.*

Revendication. Upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to retake them, or he has a lien upon them for the price, if unpaid; and in other countries he possesses a right of stoppage *in transitu* only in cases of insolvency of the vendee. The Roman law did not generally consider the transfer of property to be complete by sale and delivery alone without payment or security given for the price, unless the vendor agreed to give a general credit to the purchaser; but it allowed the vendor to reclaim the goods out of the possession of the purchaser, as being still his own property. *Quod vendidi* (say the Pandects), *non aliter, fit accipientis, quam si aut pretium nobis solutum sit, aut satis eo nomine datum, vel etiam fidem habuerimus emptori sine ullâ satisfactione.* The present code of France gives a privilege or right of revendication against the purchaser for the price of goods sold, so long as they remain in possession of the debtor. In respect to ships, a privilege is given by the same code to a certain class of creditors, such as vendors, builders, repairers, mariners, etc., upon the ship, which takes effect even against subsequent purchasers, until the ship has made a voyage after the purchase; and, by the general maritime law, acknowledged in most, if not in all, commercial countries, hypothecations and liens are recognised to exist for seamen's wages and for repairs of foreign ships, and for salvage.—*Story's Confl. Laws*, sect. 401.

Revenue, income, annual profit received from land or other funds; also the profits or fiscal prerogatives of the Crown.

Revenue causes are peculiarly within the province of the Court of Exchequer; the practice of which court in matters of revenue is regulated by 22 & 23 Vict. c. 21, s. 9 *et seq.*, and the 28 & 29 Vict. c. 104.

The jurisdiction of the Court of Exchequer was transferred to the High Court of Justice

(Jud. Act, 1873, s. 16); but all causes which would have been within the exclusive cognizance of the Court of Exchequer were assigned to the Exchequer Division of the High Court (Ibid., s. 34), but in 1881, by Order in Council, under s. 32 of that Act the Exchequer Division was merged in the Queen's Bench Division. The practice and proceedings on the revenue side of that division are not affected by the Rules of the Supreme Court (see R. S. C. 1883, Ord. LXVIII.).

The electoral disabilities of revenue officers are removed by 31 & 32 Vict. c. 73, and 37 & 38 Vict. c. 22.

Reverend, not a title of honour or dignity, and a person prefixing it to his name does not thereby claim to be in holy orders. So held in *Keet, App. Smith, resp.* 1 *P. D.* 73, in which case, the incumbent of a parish having refused to allow a tombstone describing the deceased as a daughter of the 'Rev. H. Keet, Wesleyan Minister,' to be erected in his churchyard, a faculty was ordered to issue for the erection of the tombstone.

Reversal of Judgment. A judgment might have been reversed without a writ of error, for matters foreign to or *dehors* the record, i.e., not apparent upon the face of it, so that they could not be assigned for error in the superior courts, or by writ of error, which lay from all inferior jurisdictions to the Queen's Bench and thence to the Exchequer Chamber and the House of Lords. It was brought for mistakes as to matters of substance, appearing in the judgment or other parts of the record. See *Steph. Com.*, 7th ed., iii. 579; iv. 463. Error is now abolished, except in Crown cases, by the Judicature Act, 1875, Ord. LVIII., r. 1; and in all other cases where it could formerly have been used recourse must now be had to an appeal, as to which see other rules of the above order, and see title APPEAL. As to reversal of outlawry, see OUTLAWRY.

Reverse, to undo, repeal, or make void.

Reverser, a reversioner.

Reversion [fr. *revertor*, Lat.], that portion left of an estate after a grant of a particular portion of it, short of the whole estate, has been made by the owner to another person. It is thus described by Mr. Watkins (*Conv.* c. 16): 'When a person has interest in lands, and grants a *portion of that interest*, or in other terms, *a less estate than he has in himself*, the possession of those lands shall, on the determination of the granted interest or estate, *return*, or *revert to the grantor*. This interest is what is called the grantor's reversion, or, more properly, his right of reverter, which, however, is deemed an actual estate in the land, bearing the fruits of seigniory Thus, a grant of an estate by the owner of the fee-simple "to A. for life," leaves in the grantor the reversion in fee-simple, which will commence in possession after the determination of A.'s life-estate; and this is called the particular estate; particular, as carved or sliced out of the larger estate or reversion.'

Reversionary, that which is to be enjoyed in reversion. Unconscionable bargains for the sale of reversionary interests may be set aside, but not, by 31 Vict. c. 4, merely on the ground of undervalue. See *Beynon* v. *Cook, L. R.* 10 *Ch.* 389 *n.*

Reversionary interests of married women in personalty. See 20 & 21 Vict. c. 57, enabling married women to dispose of such interests, and 33 & 34 Vict. c. 9, s. 3; and see also HUSBAND AND WIFE.

Reversionary lease, one to take effect *in futuro*. A second lease to commence after the expiration of a former lease.

Reversioner, one who has a reversion.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum. Co. Litt. 142.—(A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted.)

Reverter, reversion.

Re, verbis, scripto, consensu, traditione, junctura, vestus sumere pacta solent. Plow. Com. 161 *b.*—(The following things combined constitute a contract, namely, the subject matter, words, [or] writing, consent, delivery.) As to the application of the maxim, see *Plowd., supra.*

Review, Bill of: it was in the nature of proceedings in error, and its object was to procure an examination and alteration or reversal of a final decree in Chancery duly signed and enrolled.

The objects of this proceeding may be attained under the Judicature Act, by an appeal to the Court of Appeal. See APPEAL.

Review, Bill in the nature of bill of: this was filed where the decree had not been enrolled.

Review, Commission of, a commission which was sometimes granted in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. The court of delegates is abolished.

Reviling church ordinances, an offence against religion, punishable by fine and imprisonment.—4 *Steph. Com.*

Revised Statutes. See ACT OF PARLIAMENT; STATUTE LAW REVISION ACT.

Revising Assessors, two officers elected by the burgesses of non-parliamentary municipal

boroughs for the purpose of assisting the mayor in revising the parish burgess lists (Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 29, and sched. 3); but their duties were transferred to the revising barristers, and their office abolished by the County Electors Act, 1888.

Revising Barristers' Courts, courts held in the autumn throughout the country, to revise the lists of voters for members of Parliament, for town councillors, and for county councillors. The office of revising barrister, for which the qualification, originally three years' standing, was altered to seven years' standing by the Revising Barristers Act, 1874, 37 & 38 Vict. c. 53, lasts only for one session, i.e., one year; but they are generally re-appointed. Queen's counsel never hold this post. The appointment is, by the Revising Barristers Act, 1886, 49 & 50 Vict. c. 42, made perpetual in 1888 by s. 10 of the County Electors Act, in the hands of the senior judge named in the commission of assize for the counties within any circuit who actually travels that circuit or any part thereof during the summer circuit in any year. The appeal on points of law, which lay to the Court of Common Pleas, by 6 Vict. c. 18, and to the Common Pleas Division of the High Court, under s. 34 of the Judicature Act, 1873, now lies to the Queen's Bench Division of the High Court by Order in Council under s. 32 of that Act. The Parliamentary Registration Act, 1843, 6 Vict. c. 18, defines and regulates the duties of revising barristers, which, after amendments by 26 & 27 Vict. c. 122, s. 4; 28 Vict. c. 36 (County Registration); 29 & 30 Vict. c. 54; 31 & 32 Vict. c. 58; 36 & 37 Vict. c. 70 (evening sittings); and 37 & 38 Vict. c. 53, were greatly increased by the Parliamentary and Municipal Registration Act, 1878, 41 & 42 Vict. c. 26, which, by s. 15, directs that the lists of parliamentary and municipal voters shall be made out and revised together by the revising barristers in cases where a municipal borough is wholly or partly co-extensive with the parliamentary borough. A further increase in the duties of revising barristers is occasioned by the County Electors Act, 1888, which by s. 9 fixes the remuneration for revising on the parliamentary, municipal, and county lists at 250 guineas to include all expenses.

As to the distribution of revising barristers among the circuits when any alteration is made in relation to the circuits, see Judicature Act, 1873, s. 23.

Revive (*v.a.*), to make oneself liable for a debt barred by the Statute of Limitations by acknowledging it; or for a matrimonial offence once condoned by committing another.

Revivor, Bill of, was a bill filed to revive and continue the proceedings, whenever there was an abatement of the suit before its final consummation either by death or marriage. Bills of revivor were abolished by 15 & 16 Vict. c. 86, s. 52.

Revivor, Bill in the nature of a bill of. The distinction between bills of revivor and bills in the nature of bills of revivor, seems to have been, that the former, in case of death, were founded upon mere privity of blood or representation by operation of law; the latter upon privity of state or title by the act of the party. In the former case, nothing could be in contest, except where the party was heir or personal representative; in the latter the nature and operation of the whole act, by which the privity of estate or title was created, was open to controversy. Obsolete.

Revivor and supplement, Bill of. This bill was a mere compound of the two preceding species of bills, and in its separate parts it must have been framed and proceeded upon in the same manner. It was resorted to where not only had an abatement taken place in a suit, but defects were to be supplied, or new events were to be stated which had arisen since the commencement of the suit. Obsolete.

Revivor, Writ of. Where it became necessary to revive a judgment, by lapse of time, or change by death, etc., of the parties entitled or liable to execution, the party alleging himself to be entitled to execution might sue out a writ of revivor in the form given in the Act, or apply to the Court for leave to enter a suggestion upon the roll, that it appeared that he was entitled to have and issue execution of the judgment, such leave to be granted by the Court or a judge upon a rule to show cause, or a summons, to be served according to the then present practice.—*C. L. P. Act*, 1852, s. 129.

By R. S. C. 1883, Ord. XLII., r. 23, where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect.

Revocation, the undoing of a thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing.—5 *Rep.* 90.

Revocation and new appointment. The

appointer may reserve a power of revocation and new appointment in the deed of appointment, although not expressly authorised so to do, by the assurance creating the power; and such a power may be reserved *toties quoties*. By a revocation the original power revives. When a deed of appointment contains no power of revocation it is absolute and cannot be revoked, although there be a power of revocation in the assurance creating the power. When a power is executed by will, an express power of revocation need not be reserved, since a will is revocable.

Revocation of agency. An agency is dissolved or determined in several ways:—

(I.) By the act of the principal, either

(*a*) Express, as

(1) By direct and formal writing, publicly advertised;

(2) By informal writing to the agent privately;

(3) by parol; or

(*b*) Implied from circumstances, as by appointing another person to do the same act, where the authority of both would be incompatible.

The exceptions to the power of the principal to revoke his agent's authority at mere pleasure, are,

(1) When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has also an interest in its execution.

(2) Where an authority or power is coupled with an interest, or is given for a valuable consideration, or is a part of a security, unless there is an express stipulation that it shall be revocable.

(3) When an agent's act in pursuance of his authority has become obligatory, for *nemo potest mutare consilium suum in alterius injuriam.*

(II). By the agent's giving notice to his principal that he renounces the agency; but the principal must sustain no damage thereby; otherwise the agent would be responsible therefor.

(III). By operation of law, as

(*a*) By the expiration of the period during which the agency was to exist or to have effect.

(*b*) By a change of condition or of state, producing an incapacity of either the principal or the agent, as

(1) Marriage of a *feme sole* principal.

(2) Mental disability established by inquisition, or where the party is placed under guardianship.

(3) Bankruptcy, excepting as to such rights as do not pass to the trustee under the adjudication.

(4) Death, unless the authority is coupled with an interest in the thing vested in the agent. See *Bailey* v. *Collett*, 18 *Beav.* 179.

(5) By the extinction of the subject of the agency.

(6) By the ceasing of the principal's powers.

(7) By the complete execution of the trust confided to the agent, who then is *functus officio.*

Revocation of will. There are four modes in which a will can be revoked, viz.: (1) by another will, or writing executed in the same manner as the original will; (2) by burning or other act done *animo revocandi*; (3) by the disposition of the property by the testator in his lifetime; (4) by marriage. By the first and third of these modes, the will may be revoked either entirely or partially; by the second and last, the revocation will be total. See *Jarman on Wills.*

Revocatione parliamenti, an ancient writ for recalling a parliament.—4 *Inst.* 44.

Revocatur [Lat.], (*it is recalled*).

Reward, a recompense for anything done.

By the 7 Geo. IV. c. 64, s. 28, the Courts may order the sheriff of the county, in which certain offences have been committed, to pay the person active in or towards the apprehension of persons charged with felonies, a reasonable sum to compensate for expense, exertion, and loss of time, and by s. 30, if a man be killed in attempting to take such offenders, the Court may order compensation to his wife or relatives.

As for taking a reward for helping to the recovery of stolen property without bringing the offender to trial, see 24 & 25 Vict. c. 96, s. 101. As to advertising a reward for the return of stolen or lost property, see STOLEN GOODS.

As to action for reward for information leading to apprehension of an offender, see *Tarner* v. *Walker*, *L. R.* 1 *Q. B.* 647.

The offering of rewards by the Government has been discontinued for several years in England on the ground that persons committed crimes for the purpose of obtaining them by false accusations, and the Home Office, though urgently requested to offer a reward for the discovery of a series of murders in Whitechapel in 1888, steadily refused to do so.

Rex est legalis et politicus. Lane 27.—(The king is both a legal and political person.)

Rex est lex vivens. Jenk. Cent. 17.—(The king is the living law.)

Rex est major singulis, minor universis. Bract. lib. 1, c. 8.—(The king is greater than any single person—less than all.)

Rex hoc solum non potest facere quod non

potest injustè agere. 11 Co. 72.—(The king can do everything but an injustice.)

Rex non debet esse sub homine, sed sub Deo et sub lege; quia lex facit regem. Bract. l. 1, fo. 5.—(The king ought to be under no man, but under God and the law; because the law makes a king.) See *Br. Leg. Max.*, 6th ed., 40, 110.

Rex non potest peccare. 2 Rolle, R. 304.—(The king can do no wrong.) See *Broom's Leg. Max.*, 6th ed., 46.

Rex nunquam moritur. (The king never dies.) See *Broom's Leg. Max.*, 6th ed., 43.

Rhandir, a part in the division of Wales before the Conquest; every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir.—*Taylor's Hist. Gav.* 69.

Rhetoric [*n.s.*], the art of speaking not merely correctly, but with art and elegance.—*Latham.* See *Whateley's Elements of Rhetoric, Introduction*, sect. 1.

Rhodian law, a code of maritime law made by the people of Rhodes.

Rial [fr. *reale*, Span., royal money], a piece of gold coin current for 10*s.* in the reign of Henry VI., at which time there were half rials, and quarter rials, or rial-farthings. In the beginning of Queen Elizabeth's reign, golden rials were coined at 15*s.* a-piece; and in James I. there were rose-rials of gold at 30*s.* and spur-rials at 15*s.*—*Lowndes' Essay on Coins*, 38.

Ribaud, a rogue, vagrant, whoremonger; a person given to all manner of wickedness.—*Cowel.*

Ribbonmen, associations or secret societies formed in Ireland, having for their object the dispossession of landlords by murder and fire-raising. See *Alison's Hist. of Europe from* 1815 to 1852, vol. 4., cap. 20, s. 13.

Richmond Forest, a royal forest founded by Charles I. As to Richmond Park, see 2 *Hall. Const. Hist.* 14.

Richmondshire, the part of *Yorkshire* about Richmond, North Yorkshire.

Rider, an inserted leaf or clause; an additional clause tacked to a bill passing through Parliament.

Rider-roll, a schedule, or small piece of parchment, often added to some part of a roll, record, or Act of Parliament.

Riding armed. The offence of riding or going armed with dangerous or unusual weapons, is a misdemeanour tending to disturb the public peace by terrifying the good people of the land.—4 *Steph. Com.*

Riding Clerk, one of the Six Clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed the Great Seal. The Six Clerks were superseded by the Clerks of Records and Writs.

Ridings [corrupted from *trithings*], the names of the parts or divisions of Yorkshire, which are three only, viz., East Riding, North Riding, and West Riding.

Riens in arrear, a plea which was used in an action of debt for arrearages of account, whereby the defendant alleged that there was nothing in arrear. See STATEMENT OF DEFENCE.

Riens passe per la fait (*nothing passes by the deed*), the form of an exception taken in some cases to an action on a deed. Obsolete.

Riens per descent (*nothing by descent*), the plea of an heir where he was sued for his ancestor's debts, and had no land from him by descent or assets in his hands.—3 *Cro.* 151. See now STATEMENT OF DEFENCE.

Rier, or **Reer-county** [fr. *retro-comitatus*, Lat.], close county, in opposition to open county. It appears to be some public place which the sheriff appoints for the receipt of the king's money after the end of the County Court. Fleta says it is *dies crastinus post comitatum.*—*Encyc. Lond.*

Rifflare [fr. *reife*, Sax.], to take away anything by force.

Right [fr. *recht*, Germ. and Teut.; *rectus*, Lat. The application of the same word to denote *a straight line* and *moral rectitude of conduct*, has obtained in every language I know.—*Dugald Stewart*], in its primitive sense, that which the law directs; in popular acceptation, that which is so directed for the protection and advantage of an individual, is said to be his right.—1 *Stark. Evid.* 1, n. (b). In other words, it is a liberty of doing or possessing something consistently with law.

Right close, Writ of, an abolished writ which lay for tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively.—1 *Steph. Com.*

Right in Court. See RECTUS IN CURIÂ.

Right patent. An obsolete writ which was brought for lands and tenements, and not for an advowson, or common, and lay only for an estate in fee-simple, and not for him who had a lesser estate, as tenant-in-tail, tenant-in-frank marriage, or tenant for life.—*F. N. B.* 1.

Right to begin. If the affirmative of the issue is on the plaintiff, he, in general, has a right to begin. If in replevin the defendant avow for rent in arrear, and the plaintiff reply riens in arrear, the plaintiff must begin. In any action where the plaintiff seeks to recover damages of an unascertained amount, he is

entitled to begin, though the affirmative be with the defendant.

In considering, however, which party ought to begin, it is not so much the form of the issue which is to be considered, as the substance and effect of it, and the judge will consider what is the substantial fact to be made out, and on whom it lies to make it out. And it seems that, as a general rule, the party entitled to begin is he who would have a verdict against him if no evidence were given on either side.

In the Court of Appeal and in all other civil appeals, the appellant's counsel begins.

On an appeal to quarter sessions from the petty sessions, the person who appears in support of the order of the magistrate begins. Consult 3 *Steph. Com.*

Right, Writ of [*breve de recto*, Lat.], a procedure for the recovery of real property after not more than sixty years' adverse possession; the highest writ in the law, sometimes called, to distinguish it from others of the droitural class, the writ of right proper. Abolished by 3 & 4 Wm. IV. c. 27; last used in 1835 in *Davies* v. *Lowndes*, 1 *B. N. C.* 597.—*Steph. Com.*, 7th ed., iii. 392, 415 n.; iv. 412.

Rights, Bill of. See BILL OF RIGHTS.

Rights, Petition of. See PETITION OF RIGHTS.

Ring-dropping, a trick variously practised. One mode is as follows, the circumstances being taken from *Patch's case*, 2 *East P. C.* 678:—The prisoner, with accomplices, being with their victim, pretend to find a ring wrapt in paper, appearing to be a jeweller's receipt for a 'rich brilliant diamond ring.' They offer to leave the ring with the victim if he will deposit some money and his watch as a security. He lays his watch and money, is beckoned out of the room by one of the confederates, while the others take away his watch, etc. This is a larceny. See further 2 *Russ. on Cr.*, 5th ed., 176 *et seq.*

Ringing the changes, a trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in *Frank's case*, 2 *Leach*, 64:—A man having bargained with the prisoner, who was selling fruit about the street, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to test it by biting, and returning a shilling, said it was a bad one. The buyer gave him a second, which he treated like the first, and returned with the same words, and so with a third shilling. The shillings he returned being bad, this was an uttering of false money. —1 *Russ. on Cr.*, 5th ed., 231.

Riot, a tumultuous disturbance of the peace by three persons or more assembling of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. The punishment for riots not falling within the provisions of the Riot Act, is fine and imprisonment, to which hard labour may, by 3 Geo. IV. c. 114, be superadded.

As to riots at elections, see 2 Wm. IV. c. 45, s. 70, and 5 & 6 Wm. IV. c. 36, s. 8.

In any case of riot, or even apprehended riot, all places where intoxicating liquors are sold may be ordered to be closed by justices of the peace under s. 23 of the Licensing Act, 1872, 35 & 36 Vict. c. 94.

The riotous demolition of buildings or machinery is felony by 24 & 25 Vict. c. 97, s. 11.

Riot Act, 1 Geo. I. st. 2, c. 5 (amended as to punishment, by 7 Wm. IV. and 1 Vict. c. 99; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3), whereby if twelve or more persons assemble unlawfully, to the disturbance of the peace, and do not disperse after proclamation, they are felons, punishable by penal servitude for life, originally by death.

Riot Damages Act, 1886, 49 & 50 Vict. c. 38, providing compensation, out of the police rate, to any person sustaining damage by riot. From very early times (see the repealed Acts scheduled to 7 & 8 Geo. IV. c. 27) compensation of some kind for damage by riot was recoverable from 'hundredors' (see HUNDREDORS), and the Consolidating Act, 7 & 8 Geo. IV. c. 31, regulated the procedure for obtaining the compensation, limiting the title to recover to cases where there had been a felonious demolition of property, and giving no compensation for property stolen. A serious riot occurring in the metropolis on the 8th February, 1886, and disclosing insufficiency in the law of compensation, led very quickly to the Metropolitan Police Compensation Act, 1886, 49 Vict. c. 11, applicable to the metropolis only and retrospective, and shortly afterwards to the general Riot Damages Act, 1886, by which (1) the police district is substituted for the hundred as the area liable to compensation; (2) simple demolition is substituted for felonious demolition as giving the right to compensation; (3) compensation is given for stolen property; and (4) in fixing the amount of compensation, regard is to be had to the conduct of the

claimant, whether as respects precautions taken by him, or the part taken by himself in the riot, or the provocation offered by him to the rioters. The time for sending in claims, and the procedure generally as to claims, is fixed by regulations of a Secretary of State; and the regulations published in the *London Gazette* of August 3rd, 1886, and the *Law Times* of August 7th, 1886, limit fourteen days as the time within which claims must be sent in.

Riparia, a mediæval-Latin word, which Lord Coke takes to mean water running between two banks; in other places it is rendered bank. See MAGNA CHARTA, cap. 15.

Riparian nations, those who possess opposite banks or different parts of banks of one and the same river.—*Inter. Law.*

Riparian proprietors, owners of lands bounded by a river or water-course.

Ripon, Bishopric of, created pursuant to the report of the Ecclesiastical Commissioners.

Riptowell, or **Reaptowel,** a gratuity or reward given to tenants after they had reaped their lord's corn or done other customary duties.—*Cowel.*

Ripuarian laws, a code of laws belonging to the Franks who occupied the country upon the Rhine.

Ritualism. See PUBLIC WORSHIP REGULATION ACT, 1874.

Rivage, or **Rivagium,** a toll anciently paid to the Crown for the passage of boats or vessels on certain rivers.—*Cowel.*

Riveare, to have the liberty of a river for fishing and fowling.—*Cowel.*

Rivers' Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75.

Rixa, a dispute or quarrel.—*Civ. Law.*

Rixatrix communis, a common scold.—4 *Steph. Com.*

Road, a way or passage; a secure place for the anchoring of vessels.

Robbery, the unlawful and forcible taking, from the person of another, of goods or money to any value, by violence or putting him in fear.

(1) There must be an unlawful taking, otherwise it is no robbery.

(2) It is immaterial of what value the thing taken is.

(3) The taking must be by force or by a previous putting in fear, which makes the violation of the person more atrocious than privately stealing. For, according to the civil law maxim, *qui vi rapuit, fur improbior esse videtur.* This previous violence or putting in fear is the criterion that distinguishes robbery from other larcenies.—4 *Steph. Com.*, and see 24 & 25 Vict. c. 96.

Roberdsman, or **Robertsman,** a bold and stout robber or night thief, so called from Robin Hood, the famous robber, but perhaps, a corruption of 'robber's-man.'—3 *Inst.* 197.

Rod, a measure of sixteen feet and a half long, otherwise called a perch.

Rod Knight, certain servitors who held their land by serving their lords on horseback. —*Cowel.*

Roe, Richard, otherwise **Troublesome,** the casual ejector and fictitious defendant in ejectment, whose services are no longer invoked. See JOHN DOE, and EJECTMENT.

Rogation [fr. *rogatio,* Lat.], the demand by the consul or tribunes of law to be passed by the people.—*Civ. Law.*

Rogationes, quæstiones, et positiones debent esse simplices. Hob. 443.—(Demands, questions, and claims ought to be simple.)

Rogation week [fr. *rogando* (*Deum*), Lat., supplicating God], the second week before Whit Sunday, thus called from three fasts observed therein, the Monday, Tuesday, and Wednesday, called Rogation days, because of the extraordinary prayers then made for the fruits of the earth, or as a preparation for the devotion of Holy Thursday.

Rogatio testium, bidding persons present to be witnesses to a nuncupative will.—1 *Wms. Exs.*, 7th ed., 121.

Rogatory letters, a commission from one judge to another requesting him to examine a witness.

Rogue, a wandering beggar, vagrant, vagabond. As to 'incorrigible rogue,' or 'rogue and vagabond,' see VAGRANT.

Rogus, a funeral pile; a great fire wherein dead bodies were burned; a pile of wood.—*Claus.* 5 *Hen. III.*

Rôle, d'équipage [Fr.], the list of a ship's crew; a muster-roll.

Roll, a schedule of parchment that may be turned up with the hand in the form of a pipe.—*Staundf. P. C.* 11. A list, as a burgess roll, a freeman's roll under the Municipal Corporations Act. All pleadings, memorials, and acts of court are entered on rolls, and filed with the proper officers, and then they become records of the court.

Roll of Court, the court-roll in a manor, wherein the business of the court, the admissions, surrenders, names, rents, and services of the tenants are copied and enrolled.

Rolling Stock (of Railways) Protection Act, 1872, 35 & 36 Vict. c. 50, by which rolling stock of a railway company when out on sidings, etc., belonging to private occupiers, is exempted from *distress* for rent due from the occupiers. The rolling stock is protected from *execution* by s. 4 of the Railway Com-

panies Act, 1867, 30 & 31 Vict. c. 127, made perpetual by 38 & 39 Vict. c. 31.

Rolls, Master of the. See MASTER OF THE ROLLS.

Rolls Office of the Chancery, an office in Chancery Lane, London, which contains rolls and records of the High Court of Chancery, the master whereof is the second person in the Chancery, etc. The Rolls Court was there held, the Master of the Rolls sitting as judge; and that judge still sits there as a judge of the Chancery Division of the High Court of Justice.

This house or office was anciently called *Domus Conversorum*, as being appointed by King Henry III. for the use of converted Jews, but their irregularities occasioned King Edward II. to expel them thence, upon which the place was deputed for the custody of the rolls.—*Encyc. Lond.*

Rolls of the Exchequer. There are several in this court relating to the revenue of the country.

Rolls of Parliament, the manuscript registers of the proceedings of our old Parliament; in these rolls are likewise a great many decisions of difficult points of law, which were frequently, in former times, referred to the determination of this supreme court by the judges of both benches, etc.

Rolls of the Temple. In each of the two Temples is a roll called the calves'-head roll, wherein every bencher, barrister, and student is taxed yearly; also, meals to the cook and other officers of the houses, in consideration of a dinner of calves'-head, provided in Easter Term.—*Orig. Jurid.* 199.

Roman Catholics. See PAPISTS.

Roman Civil Law. See CIVIL LAW.

Roman Law of Descartes. See *Hale's Hist.*, p. 29.

Roma-Peditæ, pilgrims that travelled to Rome on foot.—*Mat. Paris*, anno 1250.

Rome-scot, or **Rome-penny,** Peterpence, which see.—*Cowel.*

Romilly's Act, 52 Geo. III. c. 101. As to charity abuses, see CHARITY.

Romney Marsh, a tract of land, in Kent, governed by certain ancient and equitable laws of sewers, from which commissioners of sewers may receive light and direction.—4 *Inst.* 276; 3 *Steph. Com.*

Rood, or **Holy Rood,** holy cross.

Rood of land, the fourth part of an acre in square measure, or 1,210 square yards.

Rooks are animals *feræ naturæ*. See *Hannam* v. *Mockett*, 2 *B. & C.* 934.

Rope-dancers. Unlicensed booths and stages for rope-dancers and mountebanks are public nuisances, and may, upon indictment, be suppressed, and the keepers of them fined,—1 *Hawk. P. C.* 75, s. 6.

Ros, a kind of rushes, which some tenants were obliged by their tenure to furnish their lords withal.—*Cowel.*

Rosland, heathy ground, or ground full of ling; also, watery and moorish land.—1 *Inst.* 5.

Roster, a list of persons who are to perform certain legal duties when called upon in their turn. In military affairs it is a table or plan by which the duty of officers is regulated.

Rota, the system by which succession to the functions of a temporary office is regulated among the persons who are to discharge them. See, e.g., Parliamentary Elections Act, 1868, s. 11.

Rother-beasts, oxen, cows, steers, heifers, and suchlike horned animals.—*Cowel.*

Rotulus Wintoniæ (*the Roll of Winton*), an exact survey of all England, made by Alfred, not unlike that of Domesday; so called because kept at Winchester, among other records of the kingdom; but this roll time has destroyed.—*Ingulph. Hist.* 516.

Roulette and **Rolypoly.** See GAMING.

Round-robin, a circle divided from the centre, like Arthur's round table, whence its supposed origin. In each compartment is a signature, so that the entire circle, when filled, exhibits a list, without priority being given to any name. A common form of round-robin is simply to write the names in a circular form.

Rout, a disturbance of the peace by persons assembling with an intention to do a thing, which, if it be executed, will make them rioters, and actually making a motion towards its execution.—4 *Steph. Com.*

Roy, Royan, a Hindoo title, given to the principal officer of the *Khalsa*, or chief treasurer of the exchequer.—*Indian.*

Royal assent, the Act by which the Crown agrees to a bill which has already passed both Houses, is called 'The Royal Assent,' which may be given by the Sovereign in person in the House of Lords, the Commons standing at the bar; or by Commissioners appointed by the Crown, under 33 Hen. VIII. c. 21, for that special purpose and for the single occasion. The forms observed in both cases do not vary, and are as follow: The Lords being assembled in their own House, the Sovereign or the Commissioners seated, and the Commons at the bar, the titles of the several bills which have passed both houses are read, and the King's or Queen's answer is declared by the Clerk of the Parliaments in Norman-French. To a bill of supply, the assent is given in the following words: '*Le roy* (or, *la reyne*) *remercie ses loyaux sujets, accepte leur bénévolence et ainsi le veult.*' To

a private bill it is thus declared: '*Soit fait comme il est désiré.*' And to public general bills it is given in these terms: '*Le roy* (or, *la reyne*) *le veult.*' Should the Sovereign refuse assent, it is in the gentle language of '*Le roy* (or, *la reyne*) *s'avisera.*' As acts of grace and amnesty originate with the Crown, the clerk, expressing the gratitude of the subject, addresses the throne as follows: '*Les prélats, seigneurs, et communs, en ce présent parlement assemblés au nom de tout vos autres sujets remercient très humblement votre majesté et prient à Dieu vous donner en santé bonne vie et longue.*' The moment the royal assent has been given, that which was a bill becomes an Act, and instantly has the force and effect of law, unless some time for the commencement of its operation should have been specially appointed.

Queen Elizabeth, at the end of one session, rejected forty-eight bills agreed to by both Houses. The power of rejection was exercised in the year 1692 by William III., who at first refused, but in two years afterwards yielded assent to the bill for triennial parliaments; and for the last time in 1707, when Queen Anne refused her assent to a Scotch militia bill.—*Dod's Parl. Com.* 94.

Royal burghs in Scotland are incorporated by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A burgh is called a royal burgh if it hold of the Crown; if it hold of a subject it is termed a burgh of barony. See 3 & 4 Wm. IV. c. 46; 3 & 4 Wm. IV. c. 77, explained by 4 & 5 Wm. IV. c. 87.

Royal Courts of Justice, the statutory name, by s. 28 of the Jud. (Officers) Act, 1879, 42 & 43 Vict. c. 78, of the Law Courts, on the north side of the Strand, between St. Dunstan's Church and Chancery Lane, in which the business of the Supreme Court is transacted. The erection of buildings for bringing together into one place 'all the Superior Courts of Law and Equity, the Probate and Divorce Courts and the Court of Admiralty,' recommended by a Royal Commission in 1858, was authorised by Parliament in 1865 by the Courts of Justice Building Act and the Courts of Justice Concentration (Site) Act, 28 & 29 Vict. cc. 48, 49. The Royal Courts were formally opened by Queen Victoria on the 4th of December, 1882, and opened for business on the 11th of January, 1883, the Judges' Chambers and other offices having been opened for business in January, 1880. Prior to the opening, the Chancery Division of the High Court occupied Courts at Lincoln's Inn, and the Queen's Bench and Probate, Divorce, and Admiralty Division Courts adjoining Westminster Hall.

'Guildhall Sittings' for the transaction of London City *nisi prius* business were also held in the Guildhall, but provision was made by s. 20 of the Courts of Justice Building Act, 1865, for removing such business to the Royal Courts on request of the City Common Council, which request having been made, the business was removed accordingly, an Order in Council directing in May 1883 that London causes were to be tried for ever thereafter at the Royal Courts. But in 1891 the Supreme Court of Judicature (London Causes) Act, 1891, 54 Vict. c. 14, has directed that, notwithstanding the Act of 1865 and any Order in Council thereunder, sittings may be held in the City of London by judges of the High Courts; and two judges commenced to hold such sittings in November 1891.

Royal fish. See REGAL FISH.

Royal grants, conveyances of record. They are of two kinds: (1) letters-patent; and (2) letters-close, or writs-close.—1 *Steph. Com.*

Royal Marriage Act, 12 Geo. III. c. 11, by which no descendant of King George II. may marry without consent of the Sovereign, unless he be above 25, in which case the marriage may take place after 12 months' notice, unless disapproved by Parliament.

Royal mines, gold and silver mines. See MINES.

Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised.

Roy est l'original de touts franchises. Keilw. 138.—(The king is the original of all franchises.)

Roy n'est lié par aucun statut s'il ne soit expressement nosmé. Jenk. Cent. 307.—(The king is not bound by any statute, unless expressly named.) See *Broom's Leg. Max.*, 6th ed., 68.

Roy pent dispenser sur malum prohibitum, *mais non* malum per se. *Ibid.*—(The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se.*)

R. S. C., Rules of the Supreme Court.

Rubric, directions printed in books of law and in prayer-books, so termed because they were originally distinguished by red ink.

Rubric of a statute, its title, which was anciently printed in red letters. It serves to show the object of the legislature, and thence affords the means of interpreting the body of the Act. Hence the phrase of an argument, *à rubro ad nigrum.*

Rubricas, constitutions of the church founded upon the Statutes of Uniformity and Public Prayer, viz., 5 & 6 Edw. VI. c. 1; 1 Eliz. c. 2; 13 & 14 Car. II. c. 4.

Rudmas-day [fr. *rode*, Sax., cross, and mass-day], the feast of the Holy Cross. There are two of these feasts; one on the 3rd of May, the Invention of the Cross; and the other on the 14th of September, called the Holy Rood-day, the Exaltation of the Cross.

Ruffanamah, an agreement.—*Indian.*

Rules, orders regulating the practice of the Courts; or (2) orders made between parties to an action or suit.

(1) General rules regulating the practice of the Courts, both of common law and equity, have from time to time been made by the Courts in pursuance of the powers of various Acts of Parliament. See as to the Common Law Courts, which promulgated consecutive Rules without any division into Orders, *Day's Common Law Procedure Acts*; and as to the Equity Court, which promulgated Orders subdivided into Rules, *Morgan's Chancery Acts and Orders.* A large body of Orders subdivided into Rules is appended to the Judicature Act, 1875, the 17th section of which allowed a majority of the judges to alter, annul, or add to them from time to time. The 17th section of the App. Jur. Act, 1876, as amended by the 19th section of the Jud. Act, 1881, delegates this power to a committee of any five or more of eight judges. The Rules made from time to time under the authority of these acts are called 'Rules of the Supreme Court.' They were consolidated with many amendments in 1883 by the 'Rules of the Supreme Court, 1883.'

(2) At Common Law, rules on the plea side of the courts were *common*, being obtained from the master, without motions by counsel; or *special*, obtained upon motion by counsel.

Those granted upon motion by counsel might be classed under the following heads: 1st, those which were granted upon the motion-paper being merely signed by counsel without any motion being actually made in court; 2nd, those which were considered so much as a matter of course, that the grounds of the motion were not particularised by counsel, and where, in some instances, counsel might hand the motion-paper to one of the masters, without making the motion *vivâ voce*; and, 3rd, those which were granted upon the grounds of the motion being particularised by counsel.

The first class of the above rules were absolute in the first instance; the second and third were either absolute in the first instance, or rules to show cause commonly called rules *nisi*, which were made absolute after service unless good cause shown to the contrary.—2 *Chit. Arch. Prac.*, 12th ed., 1577 *et seq.*

By the Judicature Act, 1875, Ord. LIII., rr. 2, 3, no rule or order to show cause shall be granted in any action except in the cases in which an application for such rule or order is expressly authorised by the rules; and a notice of motion must be given where the motion is not for a rule to show cause or a motion on which, by the old practice, a rule was granted *ex parte* absolute in the first instance. See further MOTION; NEW TRIAL, and consult the *Annual Practice.*

Rules of Court means (when used in relation to any Court) in any Act passed in or after 1890, 'rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such Court,' and as regards Scotland, 'includes acts of adjournal and acts of sederunt.'—*Interpretation Act*, 1889, s. 14.

Rules of the Supreme Court, the Rules scheduled to the Judicature Act, 1875, and subsequent Rules amending the same. So called by virtue of the Rules of the Supreme Court, December 1875. See RULES.

Rules of the Supreme Court (Costs). The Rules respecting costs made by Order in Council of the 12th of August, 1875, repealed and re-enacted with amendments by the Rules of 1883. See RULES.

Run (*v.n.*), to take effect in point of place, as to the Queen's writ in given localities: or in point of time, as of the Statute of Limitations.

Runcaria, land full of brambles and briars. —1 *Inst.* 5 a.

Runcilus, Runcinus, a load-horse, sumpter-horse, cart-horse.—*Cowel.*

Rundlet, or **Runlet**, a measure of wine, oil, etc., containing eighteen gallons and a half.—1 *R. III.* c. 13; *Cowel.*

Running days. See LAY DAYS.

Run with the land—Run with the Reversion. A covenant is said to run with 'land' either leased or conveyed in fee when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to run with the reversion to land leased, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion. *Consult Spencer's case*, 1 *Sm. L. C.* 1, where a list of the covenants so running and not so running is given; and see too *Woodfall, L. & T.*, 14th ed., Ch. v. sect. 8.

Runrig lands. Lands in Scotland where the ridges of a field belong alternately to different proprietors. Anciently this kind of possession was advantageous in giving an

united interest to tenants to resist inroads. By the Act 1695, c. 23, a division of these lands was authorised, with the exception of lands belonging to corporations.

Rupee, a silver coin rated at 2*s.* for the current, and 2*s.* 3*d.* for the Bombay, rupee. —*Indian.*

Rupert's Land Act, 1868, 31 & 32 Vict. c. 105; and see 32 & 33 Vict. c. 101.

Ruptarii, or **Ruttarii**, soldiers.—*Mat. Paris*, anno 1199. See *Cowel.*

Ruptura, arable land, or ground broke up. —*Cowel.*

Rural deanery, the circuit of an archdeacon's and rural dean's jurisdictions. Every rural deanery is divided into parishes. See 1 *Steph. Com.*, and DEAN.

Rural deans, very ancient officers of the church, almost grown out of use, until about the middle of the present century, about which time they were generally revived, whose deaneries are an ecclesiastical division of the diocese or archdeaconry. They are deputies of the bishop, planted all round his diocese, to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine candidates for confirmation, armed in minuter matters with an inferior degree of judicial and coercive authority. See further DEAN.

Rural Sanitary District. Under the public Health Act, 1875, the area of any union (see that title) not coincident in area with an urban sanitary district (see that title), not wholly included in an urban sanitary district; the guardians of the union form the rural authority.

Ruse de guerre [Fr.], a trick in war; a stratagem.

Rustici, churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing, and other labours of agriculture, for the lord. The land of such ignoble tenure was called by the Saxons *gafalland*, as afterwards socage tenure, and was sometimes distinguished by the name of *terra rusticorum.—Paroch. Antiq.* 136.

Ruta, things extracted from land, as sand, chalk, coal, and such other matters.—*Civ. Law.*

Rutland, Statute of, 12 Edw. I.

Ryot, a peasant, subject, tenant of house or land.—*Indian.*

S.

S. P., *sine prole*, without issue.

Sabbath. See SUNDAY.

Sabbatum, the Sabbath; also peace.—*Domesday.*

Sabbulonarium, a gravel pit, or liberty to dig gravel and sand; money paid for the same.—*Cowel.*

Sable, the heraldic term for black. It is called *Saturn* by those who blazon by planets, and *Diamond* by those who use the names of jewels. Engravers commonly represent it by numerous perpendicular and horizontal lines crossing each other.

Sac, the privilege enjoyed by a lord of a manor, of holding courts, trying causes, and imposing fines.—*Cowel.*

Saca, cause, sake.

Sacaburth, Sacabere, Sakabere, he that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suits.—*Bracton*, l. 3, c. 32. The Scots term it *sikerborgh* (that is, *securum plegium*).—*Spelm.*

Saccularii, cut-purses.—*Roman term*, 4 *Steph. Com.*

Saccus cum brochiâ, a service or tenure of finding a sack and a broach (pitcher) to the sovereign for the use of the army.—*Bract.* l. 2, c. 16.

Sacquier, an ancient officer, whose business was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, cheating him of his merchandise.—*Mar. Law.*

Sacrament. Reviling the sacrament is punishable by fine and imprisonment.—1 *Edw. VI.* c. 1.

For a clergyman to refuse without lawful cause to administer the sacrament to a parishioner is an offence against the laws ecclesiastical, for which he may be proceeded against under the Church Discipline Act.—*Jenkins* v. *Cook*, 1 *P. D.* 80.

Sacramentum, on oath. As to the *sacramenti actio* of the Civil Law, see *Sand. Just.*, 7th ed., 63, and *Cum. C. L.* 313.

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. 2 Inst. 167. —(A foolish oath, though false, makes not perjury.)

Sacrilege, larceny from a church. See LARCENY (3). Also the alienation to laymen of property given to pious uses.—*Par. Ant.* 390.

Sacrilegus omnium prædonum cupiditatem et scelera superat. 4 Co. 106.—(A sacrilegious person transcends the cupidity and wickedness of all other robbers.)

Sacristan, a sexton, anciently called *sagerson*, or *sagiston*; the keeper of things belonging to divine worship.

Sadberge, a denomination of part of the county-palatine of Durham.—*Camd. Brit.*

Sæmend, an umpire, arbitrator.—*Anc. Inst. Eng.*

Sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur. 7 Co. 27.—(Many a time where the literal meaning of words is attended to, the true meaning is lost.)

Sæpe viatorem nova, non vetus, orbita fallit. 4 Inst. 34.—(A new road, not an old one, often deceives the traveller.)

Sævitia [Lat.], cruelty. See CRUELTY.

Safe-conduct, convoy; guard through an enemy's country; (2) a document allowing such a journey. It is a prerogative of the Crown to grant safe-conducts.

Safe-guard, a protection of the Crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law.—*Reg. Orig.* 26.

Safe-pledge, a surety appointed for one's appearance at a day assigned.—*Bract.* l. 4.

Sagaman, a tale-teller; secret accuser.

Sagibaro, Sachbaro, a judge.—*Leg. Inæ.* c. vi.

Sailing instructions, written or printed directions delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet in case of dispersion by storm, by an enemy or otherwise. Without sailing instructions no vessel can have the protection and benefit of convoy.—*Mar. Ins.* 368.

Sailors' homes. See 17 & 18 Vict. c. 104, s. 546.

Saint Martin le Grand, Court of. A writ of error formerly lay from the sheriff's courts in the city of London to the court of hustings, before the mayor, recorder, and sheriffs; and thence to justices appointed by the royal commission, who used to sit in the church of St. Martin le Grand; and from the judgment of those justices a writ of error lay immediately to the House of Lords.—*F. N. B.* 32.

Saisie-arret [Fr.], an attachment of property in the possession of a third person.

Saladine Tenth, a tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by Richard I. of England and Philip Augustus of France, against Saladin, Sultan of Egypt, then going to besiege Jerusalem. By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms. The Carthusians, Bernardines, and some other religious persons, were exempt. Gibbon remarks, that when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the Pope or other sovereigns.—*Encyc. Lond.*

Salary, a recompense or consideration made to a person for his pains and industry in another person's business; also wages, stipend, or annual allowance.—*Cowel.*

The ancients derive the word from *sal*, salt (*Plin. H. N.* xxxi. 42); the most necessary thing to support human life being thus mentioned as a representative of all others, and the word, if thus derived, bears a most striking resemblance in its origin to *pin-money* (*q.v.*). *Salarium*, therefore, comprised all the provisions with which the Roman officers were supplied, as well as their pay in money. In the time of the republic, the name *salarium* does not appear to have been used; it was Augustus who, in order to place the governors of provinces and other military officers in a greater state of dependence, gave salaries to them, or certain sums of money, to which afterwards various supplies in land were added.—*Smith's Dict. of Antiq.*

Sale. Blackstone (2 Com. 446) defines it as 'a transmutation of property from one man to another in consideration of some price.' A more modern writer has defined it to be 'a transfer of the absolute or general property in a thing for a price in money' (*Benjamin on Sales*, 2nd ed., p. 1). See also 2 *Kent's Com.*, 11th ed., 615. To constitute a valid sale there must be (1) parties competent to contract; (2) mutual assent; (3) a thing the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised (*Benjamin on Sales, ubi sup.*).

As to sales of lands, see *Sugden* or *Dart* on *Vendors and Purchasers.*

All causes and matters for the specific performance of contracts between vendors and purchasers of real estates, are assigned to the Chancery Division of the High Court of Justice, as are also all causes and matters for the partition or sale of real estates (Jud. Act, 1873, s. 34.)

As to the sale of personal property, see *Blackburn* or *Benjamin on Sales.*

Sale, bill of. See BILL OF SALE.

Sale notes. See BOUGHT AND SOLD NOTES.

Sale of settled estates. See SETTLED LAND.

Salic, or **Salique** [*lex salica*, Lat.], an ancient and fundamental law of the kingdom of France, usually supposed to have been made by Pharamond, or at least by Clovis, in virtue of which males only are to reign.

It is a popular error to suppose that the Salic law was established purely on account of the succession of the Crown, since it extends to private persons as much as to the royal family.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the succession of land. It was purely a law of economy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of more service.

In proof of this, the title of allodial lands of the Salic law may be thus stated :—

(1) If a man die without issue, his father or mother shall succeed him.

(2) If he have neither father nor mother, his brother or sister.

(3) If he have neither brother nor sister, the sister of his mother.

(4) If his mother have no sister, the sister of his father.

(5) If his father have no sister, the nearest relation by the male.

(6) No part of the Salic land shall pass to the females, but it shall belong to the males; the male children shall succeed their father.—*Encyc. Lond.*; *Hallam's Mid. Ages*, note 3 to c. 2, p. 278.

Salt duty in London, a custom in the City of London called *granage,* formerly payable to the Lord Mayor, etc., for salt brought to the port of London, being the twentieth part.

Salt Silver, one penny paid at the feastday of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's salt from market to his larder.—*Paroch. Antiq.* 496.

Saltus, glade.

Salus populi est suprema lex. 11 Co. 139.—(The safety of the people is the supreme law.) See *Broom's Leg. Max.*, 6th ed., 1.

Salus reipublicæ suprema lex.—(The safety of the state is the supreme law.) See preceding maxim.

Salus ubi multi consiliarii. 4 Inst. 1.—(Where there are many counsellors, there is safety.)

Salute, a coin made by Henry V., after his conquests in France, whereon the arms of England and France were stamped and quartered.—*Stow's Chron.* 589.

Salvage, allowance or compensation made to those by whose exertions ships or goods have been saved from the dangers of the seas, fire, pirates, or enemies.

This was allowed by the laws of Rhodes, Oleron, and Wisby; and is by all modern maritime states. At Common Law, the person who saves goods from loss or imminent peril, has a lien upon them, and may retain them till payment of salvage.

If the salvage be performed at sea, or within high or low water mark, the Court of Admiralty has jurisdiction, and fixes the sum to be paid, adjusts the proportions, and takes care of the property pending the suit; or, if necessary, directs a sale and divides the proceeds between the salvors and the proprietors. In fixing the rate of salvage, the Court has regard, not only to the labour and perils of the salvors, but also to the situation in which they stand to the property saved, to the promptitude and alacrity manifested by them, and the value of the ship and cargo, and the danger from which they were rescued. In some cases as much as half of the property saved has been allowed as salvage; in others only a tenth.

The crew of a ship are not entitled to salvage or any unusual remuneration for extraordinary efforts they have made in saving her; it being their duty as well as interest to contribute their utmost upon such occasions, the whole of their possible service being pledged to the master and owners. Neither are passengers entitled to anything for the ordinary assistance they may have afforded a vessel in distress. But a passenger is not bound to remain on board a ship in danger, if he can leave her; and if he performs any *extraordinary* service, he is entitled to a proportionable recompense. Consult *Jones on Salvage*, *Abbot on Shipping*, *Maude and Pollock on Shipping*, *Machlachan on Shipping*, etc., and see Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, ss. 458—470.

Salvage-loss, the difference between the amount of salvage, after deducting the charges, and the original value of the property.

Salvo [*salvo jure*, Lat.], without prejudice to.

Salvor, a person who renders assistance to a ship or vessel in distress, whereby he becomes entitled to a reward. See SALVAGE.

Sample, a small quantity of a commodity exhibited at public or private sales as a specimen. Where goods are warehoused, certain small specified quantities are, by the regulations at the Custom House, allowed to be taken out as samples without payment of duty.

Sancta, reliques of saints, upon which oaths were made.

Sanctuary, a place privileged for the safeguard of offenders' lives, being founded on the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege.—3 *Hallam's Mid. Ages*, c. 9, pt. 1, p. 302.

All privilege of sanctuary, and abjuration consequent thereon, is utterly taken away and abolished.—21 *Jac. I.* c. 21.

Sanctum of a Law, the provision for enforcing or promoting its observance.

Sand-gavel, a payment due to the lord of the manor of Rodley, in the county of Gloucester, for liberty granted to the tenants to dig sand for their common use.—*Cowel.*

Sand-grouse may not, by the Sand-grouse Protection Act, 1888, as continued by the Expiring Laws Continuance Act, 1892, be killed in the United Kingdom between February 1st, 1889, and December 31st, 1892, in order that it may, if possible, become acclimatised.

Sandhurst Vesting Act (the), 1862, 25 & 26 Vict. c. 33.

Sane memory, perfect and sound mind and memory to do any lawful act, etc.

Sang, or **Sanc** [Old Fr.], blood.

Sanguine, or **Murrey**, blood-colour, called in the arms of princes *Dragon's tail*, and in those of lords *Sardonyx*. It is a tincture of very unfrequent occurrence, and not recognised by some writers. In engraving it is denoted by numerous lines in saltire.—*Heraldic Term.*

Sanguinem emere, a redemption by villeins, of their blood or tenure, in order to become freemen.

Sanguis, the right or power which the chief lord of the fee had to judge and determine cases where blood was shed.—*Mon. Angl.*, tom. i. 1021.

Sanis [fr. σανίς, Gk.], a kind of punishment among the Greeks; inflicted by binding the malefactor fast to a piece of wood.—*Encyc. Lond.*

Sanitary Acts, enactments protecting the public health by provisions for the inspection and removal of nuisances, etc. Amongst them are the repealed Sanitary Acts of 1866 and 1874, the repealed Nuisance Removal Acts of 1855 and 1863, and the consolidating Public Health Act, 1875, and Public Health (London) Act, 1891. See PUBLIC HEALTH.

Sanitary Authority. In municipal boroughs the borough councils, in local government districts, local boards, in the metropolis the vestries and district boards, and elsewhere the poor law guardians are sanitary authorities under the Public Health Act, or Public Health (London) Act, and are charged with the duty of enforcing the law for abating nuisances, etc., within their respective districts.

Sanity, sound understanding.

Sans ceo que [Nor.-Fr.] (*without this*). See ABSQUE HOC.

Sans frais (*without expense*). See RETOUR SANS PROTÊT.

Sans nombre, common, a common in gross, which is absolutely unlimited; a common without stint.

Sans recours [Fr.] (*without recourse to me*), which see.

Saoi [fr. *sagol*, Sax., a staff], a tipstaff or serjeant-at-arms.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum.—(It is the part of a wise judge to consider that so much only is permitted to him as is committed and entrusted to him.)

Sarculatura una, a tenant's service of one year's weeding for his lord.—*Paroch. Antiq.* 403.

Sardin-time, the time or seasons when husbandmen weed their corn.—*Cowel.*

Sarkellus, an unlawful net or engine for destroying fish.—*Cowel.*

Sart, a piece of woodland turned into arable. See ASSART.

Sassons, the corruption of Saxons: a name of contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welsh.

Satisdare, to guarantee the obligation of a principal.—*Civ. Law.*

Satisdation, satisfaction; suretyship.—*Civ. Law.*

Satisfaction, legal compensation; the recompense for an injury done, or the payment of money due and owing.

The doctrine of satisfaction of legacies, portions, and debts, means the gift of a thing with the intention, either expressed or implied, that it is to be taken either wholly or partly in extinguishment of some prior claim or demand. Of course, it is open to a donor to expressly provide that his subsequent gift shall be a satisfaction of a prior demand, so as to prevent such donee from claiming both. With regard to implied or presumable satisfactions, they have been divided into the three following classes:—

(1) The satisfaction of legacies by portions, otherwise called the ademption of legacies. Upon this subject Lord Eldon laid down in *Ex parte Pye*, 2 *W. and T. L. C.*, 6th ed., 364, that 'where a parent (or person *in loco parentis*) gives a legacy to a child, not stating the purpose with reference to which he gives it, the court understands him as giving a portion; and by a sort of artificial rule—upon an artificial notion, and a sort of feeling of what is called a leaning against double portions, if the father (or *quasi* parent) afterwards advance a portion on the marriage, or preferment in life, of that child, though of less amount, it is a satisfaction of the whole, or in part'; i.e., if the portion be equal to or greater than the legacy it operates as a total ademption of such legacy; but if it be of a lesser amount than the legacy, such portion will then only adeem the legacy *pro tanto*.

(2) The satisfaction of a portion by a legacy. The rule is, that wherever a legacy given by a parent, or a person standing *in loco parentis*, is as great as, or greater than, a portion or provision previously secured to the legatee upon marriage or otherwise, then, from the already quoted inclination of equity against double portions, a presumption arises that the legacy was intended by the testator as a complete satisfaction. When the legacy is not so great as the portion or provision, it is then only a satisfaction *pro tanto*.—*Hinchcliffe* v. *Hinchcliffe*, 3 *Ves.* 516 (1797). The bequest of a whole or part of a residue will, according to its amount, be presumed either a satisfaction of a portion in full or *pro tanto*.

(3) The satisfaction of a debt by a legacy. If a debtor bequeath to his creditor a sum of money as great as, or greater than, the debt, without taking any notice at all of the debt, this shall be deemed a satisfaction of the debt, so that the creditor cannot have the debt and also the legacy, a doctrine founded upon the maxim, *Debitor non præsumitur donare*.

Satisfaction on the Roll, Entry of. As soon as a judgment is satisfied, by payment, levy, or otherwise, the defendant is entitled to have satisfaction entered upon the roll.—1 *Chit. Arch. Prac.*, 12th ed., 721 *et seq.*

Satisfied Terms Act, 8 & 9 Vict. c. 112. See TERMS FOR YEARS.

Satius est petere fontes quam sectari rivulos. Lofft. 606.—(It is better to seek the source than to follow the streamlets.)

Saturday's stop, a space of time from evensong on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England. —*Cowel.*

Saunkefin, the determination of the lineal race; a descent of kindred.—*Brit.* c. 119.

Saver-de-fault, to excuse.—*Termes de la Ley.*

Savings Banks, institutions for the safe custody and increase of the small savings of the industrious poor. See *Chitty's Statutes*, vol. v., tit. '*Savings Banks*,' and the Savings Banks Act, 1880, 43 & 44 Vict. c. 36; 1887, 50 & 51 Vict. c. 40; and 1891, 54 & 55 Vict. c. 21.

They are either Trustees Savings Banks or Post Office Savings Banks.

Trustees Savings Banks, which may not be designated or described in any manner which imports that the Government is responsible to depositors, are banks to receive small deposits of money, the produce of which is to accumulate at compound interest, and to be paid out to the depositors as required, deducting the expenses of management. The deposits are not to exceed 30*l.* in any one year, and no fresh deposit is to be received which makes the sum to which the depositor is entitled exceed 200*l.* The management is vested in trustees who are prohibited from receiving any benefit from the banks; and are required to invest the money deposited in the Bank of England or Ireland. The moneys invested are to be carried to an account kept in the names of the National Debt Commissioners, and denominated 'The Fund for the Banks for Savings,' which affords interest to the trustees at the rate of 3*l.* per cent. per annum, the arrears of which are to be carried half-yearly to the principal. The office of trustee is vacated by non-attendance at meetings for 12 months, and the trustees are required to send to the office of the Commissioners annual accounts exhibiting the balance due to the depositors, and to affix publicly in the office of the savings bank a duplicate thereof, and a list of the trustees and managers. An 'Inspection Committee' established by the Act of 1891 has extensive powers of supervision for the purpose of detecting any breaches of the statutes, or rules regulating each bank. No deposit is to be received without a disclosure of the name, occupation, and residence of the depositor, who is also, when required by the trustees, to sign a declaration that he is entitled to no benefit from any other bank of the same description; and if such declaration be untrue, he forfeits his deposit.

Post-office Savings Banks (which have the direct security of Government) are established under the provisions of 24 Vict. c. 14, which enacts that the Postmaster-General, with the consent of the Treasury Commissioners, may direct such of his officers as he shall see fit to receive deposits for remittance to the principal office, and repay the same under such regulations as may be prescribed (s. 1). Every such deposit (which may not be of less amount than one shilling, nor of any sum not a multiple thereof) is to be entered in the depositor's book, attested by the receiving officer and by the dated stamp of his office, and the amount received is to be reported on the same day to the Postmaster-General; and an acknowledgment is to be transmitted to the depositor, which is to be conclusive evidence of his claim to repayment with interest; but for ten days after the deposit the signature of the receiving officer is sufficient. If within that time the acknowledgment has not been received, written application must be made to the Postmaster-General, the book then becoming evidence for another ten days (s. 2). The depositor is entitled to repayment of the whole or any part of the deposit on making a demand in a prescribed form, at

any post-office where deposits are received or paid, within ten days at farthest after sending in the demand (s. 3). The names of the depositors, and the amount paid in or withdrawn, are not to be disclosed to any one except the Postmaster-General and the officers appointed by him to carry this Act into effect (s. 4). This Act was amended by 26 Vict. c. 14, which *inter alia* enacts that money standing in the name of a minor in any savings bank, or in a Post-office savings bank, may, on the application of a parent or friend of the minor, if under the age of seven years, or upon his own application if above that age, be transferred to any other savings bank, but may not be withdrawn without the consent of the Postmaster-General or two of the trustees or managers of the savings bank, until the minor shall have attained the age at which it might have been withdrawn under the rules of the savings bank from which it shall have been transferred.

Savour (*v.n*), to partake the nature of; to bear affinity to.

Savoy, one of the old privileged places, or sanctuaries.—4 *Steph. Com.*

Saxon-lage, the law of the West Saxons.

Sayer, that which moves; variable imposts distinct from land, rents, or revenues; consisting of customs, tolls, licenses, duties on goods; also, taxes on houses, shops, bazaars, etc.—*Indian.*

Scabini, a word used for wardens at Lynn, Norfolk.—*Norf. Chart. Hen. VIII.*

Scaccarium, a chequered cloth resembling a chess-board which covered the table in the Exchequer, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. Hence the Court of Exchequer or *curia scaccarii* derived its name.—3 *Bl. Com.* 44.

Scalam [fr. *ad scalam*, Lat., at the scale], the old way of paying money into the Exchequer.—*Cowel.*

Scale of Costs. By Rules made by Order in Council, dated the 12th August, 1875, a new scale of costs for the Supreme Court was provided, and these Rules were re-enacted in 1883. There is a higher and a lower scale, applicable respectively to the matters specified in the rules; but the court or a judge may in any case direct the fees set forth in either scale to be allowed to all, or either, or any of the parties, and as to all or any part of the costs.

Scandal, a report or rumour, or an action whereby one is affronted in public.

Scandal, in pleadings, is injurious, by making the records of the court the means of perpetuating libellous and malignant slanders; and the court, in aid of the public morals, is bound to interfere to suppress such indecencies.

It is provided by R. S. C. 1883, Ord XIX., r. 27, that scandalous matter may be ordered to be struck out from any pleading by Ord. XXXI., r. 7, from interrogatories, and by Ord. XXXVIII., r. 11, from affidavits.

There was a stone of scandal raised in the great portal of the Capital of Rome, whereon was engraven the figure of a lion, upon which bankrupts or cessionaries being seated bare-breeched, cried with a loud voice, *cedo bonis* (I surrender my effects); when, squatting their breech violently three times on the stone, they were acquitted. It was called the stone of scandal, because thenceforward the cessionary became intestable and incapable of giving any evidence. Julius Cæsar introduced this form of surrender, after abrogating that article of the laws of the Twelve Tables which allowed creditors to cut their insolvent debtors in pieces, and take each his member, or at least to make a slave of him.—*Encyc. Lond.*

Scandalous, see last title.

Scandalum magnatum, words spoken in derogation of a peer or judge, or other great officer of the realm. They are held to be particularly heinous, and although they may be such as would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury, which is redressed by an action on the case, founded on many ancient statutes (e.g., 2 Ric. II. st. 1, c. 5, still unrepealed), as well on behalf of the Crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injuries sustained. But this action is now obsolete.—*Steph. Com.*, 7th ed., ii. 611; iii. 378 n.; *Br. & Had. Com.* i. 484; iii. 132.

Scavage, Schevage, Schewage, or **Shewage**, a kind of toll or custom, exacted by mayors, sheriffs, etc., of merchant strangers, for wares showed or offered for sale within their liberties. Prohibited by 19 Hen. VII. c. 7.—*Cowel.*

Scavaidus, the officer who collected the scavage money.—*Cowel.*

Sceat, a small coin among the Saxons, equal to four farthings.

Sceithman, a pirate or thief.

Sceppa salis, an ancient measure of salt, the quantity of which is now not known.

Schaffa, a scheaf.—*Cowel.*

Schar-penny, Scharn-penny, or **Schorn-penny**, a small duty or compensation.—*Cowel.*

Schedule, a small scroll; a writing additional or appendant; an inventory.

Schetes, usury.—*Cowel.*

Schilla, a little bell used in monasteries.

Schireman, a sheriff; the ancient name for an earl.

Schirrens-geld [fr. *shiregeld*, Sax.], a tax paid to sheriffs for keeping the shire or county court.—*Cowel.*

Schism-bill, the name of an Act passed in the reign of Queen Anne, which restrained Protestant dissenters from educating their own children, and forbade all tutors and schoolmasters to be present at any conventicle or dissenting place of worship. The Queen died on the day when this Act was to have taken effect (August 1st, 1714), and it was repealed in the fifth year of Geo. I.

School. See EDUCATION; PUBLIC SCHOOLS; REFORMATORY SCHOOLS.

School Attendance Committee, a committee appointed annually (in 'school districts') not within the jurisdiction of a 'school board' in a borough by the town council, and in a parish by the guardians of the union comprising such parish, for the purpose of enforcing the Elementary Education Act, 1876, 39 & 40 Vict. c. 79. The principal duties of the committee under that Act are: (1) to report to the Education Department any infraction of s. 7 of the Education Act, 1870, as to the conduct in religious education and generally, and as to the inspection of public elementary schools;—(2) to proceed against persons employing children under ten; (3) to proceed against parents habitually neglecting to send such children to school; and (4) to make bye-laws respecting the attendance of children at school under s. 74 of the Act of 1870, 'as if such school attendance committee were a school board.'

School Board, a body corporate of persons elected by secret voting under the Ballot Act, 1872, in a borough by the burgesses, and in a parish by the ratepayers (in cases only, *except in the metropolis*, where there is not in the 'school district' a sufficient amount of accommodation in 'public elementary schools,' or an application is made to the Education Department by the town council of a borough, or the ratepayers of a parish), for the purpose of managing 'public elementary schools' within their respective districts. (Elementary Education Acts, 1870 and 1873, 33 & 34 Vict. c. 75, ss. 10, 12, 14, 29; 36 & 37 Vict. c. 86, s. 5, and sched. 2).

The School Board in the metropolis controls all public elementary schools therein. It is elected triennially, the last election taking place on November 26th, 1891.—*Act of* 1870, s. 37 *et seq.*; Act of 1873, s. 6 and sched. 2.

School District, a municipal borough; a parish; the metropolis.—*Elementary Education Act,* 1870, s. 4. and sched. 1. 'United school districts' may, except in the metropolis, be formed by the Education Department under s. 40 of the Education Act, 1870, and see *Ib.*, s. 44, as to 'contributory districts.'

School, Elementary, a school at which elementary education is a principal part of the education given, and at which the ordinary payments from each scholar do not exceed ninepence a week.—*Elementary Education Act,* 1870, s. 3.

School, Public Elementary, a school at which elementary education is not obligatory, but inspection by her Majesty's Inspectors (in secular subjects) is, and which is conducted in accordance with the conditions required to be fulfilled by an 'elementary school in order to obtain an annual parliamentary grant.'—*Education Act,* 1870, s. 7. Every school provided by a 'school board' must be a 'public elementary school.'

School Sites Acts, 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; and 14 & 15 Vict. c. 24. By 4 & 5 Vict. c. 38, owners may convey not more than one acre to trustees 'as a site for a school for the education of poor persons'; also by the Public Parks, Schools, and Museums Act, 1871 (34 Vict. c. 13), repealed and re-enacted by the Mortmain and Charitable Trusts Act, 1888, gifts and assurances of land for the purposes of any public park, school, etc., are, subject to certain restrictions, exempted from the operation of the Statutes of Mortmain.

Schools of Anatomy, regulated by 2 & 3 Wm. IV. c. 75, and 34 Vict. c. 16.

Schoolmaster. To an action of trespass for an assault and battery the defendant pleaded that he was the headmaster of a school or college, of which the plaintiff was a pupil, and that the defendant combined with other pupils for purposes subversive to the discipline of the school, and the plea was held good. As to the extent of the powers of a schoolmaster in this respect, see 4 *F. & F.* 663, *in notis.*

Science and Art Department. Constituted by Charter. See also 38 & 39 Vict. c. 68.

Scienter [Lat.] (*knowingly, wilfully*). In an action of deceit, the *scienter* must be averred and proved. In case of injury to cattle and sheep by dogs, the proof of *scienter* of ferociousness, necessary at Common Law (see *Cox* v. *Burbidge*, 13 *C. B. N. S.* 430), is dispensed with by 28 & 29 Vict. c. 60.

Scientia sciolorum est mixta ignorantia. 8 Ca. 159.—(The knowledge of smatterers is diluted ignorance.)

Scientia utrinque par pares contrahentes facit. 3 Burr. 1910.—(Equal knowledge on both sides makes the contracting parties equal.)

Scilicet [Lat., abbrev. *scil*, or *sc.*, i.e., *scire licet*] (*that is to say, to wit*).

This is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularise that which was too general before, or distribute that which was too gross, or explain that which was doubtful; and it must neither increase nor diminish the premises nor *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express but that they may be restrained.—*Hob.* 171.

Scintilla juris et tituli [Lat.] (*a spark of law and title*).

A possibility of seisin, which is supposed to exist in the grantee to uses, when all actual seisin is taken from him by the operation of the statute, upon a limitation of springing uses, and the creation of contingent ones.

To illustrate this, let us take a springing use: a grant to A. and his heirs to the use of B. and his heirs, until C. perform an act, and then to the use of C. and his heirs. Here the statute executes the use in B., which, being co-extensive with A.'s seisin, leaves no actual seisin in A. When, however, C. performs the act, B.'s use ceases, and C.'s use springs up, and he enjoys the fee-simple; upon which the question arises, out of what seisin is C.'s use served? It is said to be served out of A.'s original seisin, for upon the cessor of B.'s use it is contended that the original seisin reverted to A. for the purpose of serving C.'s use, and is a possibility of seisin or *scintilla juris*.

If there must be a seisin somewhere to serve the future uses when they arise, it must be either in the original grantee or feoffee to uses or the *cestui que* use, but the seisin of the *cestui que* use cannot serve any other uses, because that would be a use upon a use, which the Common Law repudiates. There only remains, then, the grantee or feoffee, who is capable of the requisite seisin, which cannot be a vested interest, but is what is known as a *scintilla juris*.

Again, a feoffment to A. in fee to the use of B. in life, remainder to the use of his first son unborn in tail, with the remainder to the use of C. in fee. What seisin remains in A. until the birth of a son in B.? A. has not an actual seisin during the suspense of the contingency, but there is a possibility of seisin reverting to him, for upon the birth of B.'s son, a seisin co-extensive with the use limited to such son will vest in A. for the purpose of serving it.

This doctrine of *scintilla juris* has been warmly contested. Lord Coke admitted it (*Chudleigh's case*, 1 *Co.*, p. 120 *a*), so did Mr. Booth (see his opinion at the end of Sheppard's *Touchstone*), Mr. Sanders (1 *Uses and Trusts*, c. 2, s. 2, p. 107 *et seq.*), and Mr. Burton (*Comp.*, p. 59, 6th ed.); but Lord Bacon (*On Uses*, p. 47), Mr. Fearne (*Cont. Rem.*, p. 300), Lord St. Leonards (1 *Powers*, c. 1, s. 3, and note 10 to *Gilb. Uses*, p. 296), and Mr. Preston (1 *Prest. Est.*, p. 170, and 1 *Hayes' Conv.*, p. 61), opposed it; and Lord St. Leonards contends that the doctrine never received a regular judicial decision; and see now 23 & 24 Vict. c. 38, s. 7.

Scire facias [Lat.] (*that you cause to know*), a judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (as in the case of a *scire facias* to repeal letters patent) why the record should not be annulled and vacated. It is deemed an action, and in the nature of a new original.

In the following instances this writ is considered as an *original proceeding*:—

(1) *Scire facias* to repeal letters-patent, charters, etc. The writ issued out of the Common Law jurisdiction of the Court of Chancery, and was returnable there, and entered in the Petty-Bag Office; or out of the Court of Queen's Bench. When the parties proceeded to issue, the Clerk of the Petty-Bag delivered the record to the Queen's Bench to be tried by a jury or at bar; it was recorded in Chancery after trial and judgment and execution had thereon. If the writ is to repeal a charter, the record is transmitted to the Crown Office of the Queen's Bench, and the cause is tried at the bar of that Court. See now CHANCERY, PETTY-BAG.

(2) When special bail become fixed by the recognizance being forfeited, one of the modes of proceeding against them is by *scire facias* on the recognizance.

(3) *Scire facias* against the pledges in replevin and the registrar is obsolete, it being the practice to proceed upon the replevin bond against the former, and by an action on the case against the latter, for taking insufficient pledges or no pledges.

In the following instances the writ is, or was, a *continuation* of an original action.

(1) Upon the marriage of *feme* parties.

(*a*) If a *feme sole* obtain judgment, and marry before execution, a *scire facias* must be brought by husband and wife, in order to have execution on the judgment; and if, after judgment awarded on this *scire facias*, but before execution, the wife die, the husband alone may have execution upon the judgment, without even taking out administration.

(*β*) If judgment be recovered against a

feme sole, and she marry before execution, a *scire facias* must be brought against the husband and wife before the judgment can be executed; and if, after execution awarded upon this *scire facias*, but before execution, the wife die, the husband shall be liable to the execution.

The Married Women's Property Act, 1882, has probably the effect of rendering this unnecessary. See HUSBAND AND WIFE.

(2) On a judgment in debt on bond.

In debt on bond or other instrument in a penal sum, conditioned for the performance of covenants, or for the doing of any other specific act, although the judgment is entered up for the entire penalty, yet execution is sued out for the amount of such damages only as the jury assess upon the breaches aforesaid suggested. The judgment, however, still remains as a security to the plaintiff for such damages as he may sustain by any further breaches; and in case of any such further breaches the plaintiff shall have a *scire facias* upon the judgment against the defendant, his heirs, etc., suggesting such other breaches, and summoning him or them to show cause why execution should not be awarded upon the judgment, upon which there shall be the like proceedings as were in the action of debt upon the bond.—2 *Chit. Arch. Prac.*

(3) On a judgment *quando acciderint* against an executor, etc.

If on a plea of *plene administravit* (see title PLENE ADMINISTRAVIT), in an action against an executor or administrator, or on a plea of *riens per descent* in an action against an heir, the plaintiff, instead of taking issue on the plea, take judgment of assets *quando acciderint*; in this case, if assets afterwards come to the hands of the executor or heir, the plaintiff must first sue out a *scire facias* against such executor or heir, before he can have execution. The writ must state that the assets came to the executor's hands after the judgment; otherwise it would be bad. If assets be found for part, the plaintiff may have judgment to recover so much immediately and the residue of the assets *in futuro*.—17 & 18 *Vict.* c. 125, s. 91.

On an abatement of a judgment by lapse of time, death of parties, etc., it is now revived by suggestion or writ of revivor.

All writs of *scire facias* are tested, directed, and proceeded upon, in like manner as writs of revivor.—*C. L. P. Act*, 1852, s. 132; 2 *Chit. Arch. Prac.*, 12th ed., 1140 *et seq.* But see ABATEMENT (5), and REVIVOR, WRIT OF.

In the following instance the writ is, or was, an *interlocutory* proceeding, and in the nature of process:—

(1) *Scire facias ad audiendum errores;* abolished, except in case of a change of parties. —*C. L. P. Act*, 1852, s. 132.

The following issue after the action is terminated:—

(1) *Scire facias quare restitutionem non*, for restitution after reversal in error.

(2) *Scire facias ad rehabendam terram*, to recover lands extended under an *elegit*.

(3) *Scire facias* against the sheriff, after returning to a *fi. fa.* that he has levied the debt, to compel him to pay over the money retained in his hands.

(4) When an outlaw receives the Queen's pardon, he sues out a *scire facias* requiring the plaintiff to appear and prosecute his action against him. The plaintiff is summoned thereon. Obsolete. See OUTLAWRY.

(5) A *scire facias* against the representatives of a deceased judge that they certify a bill of exceptions. Obsolete. See BILL OF EXCEPTIONS.

(6) *Scire facias* against members of a public company to obtain execution against them (see Companies Clauses Act, 1845, s. 36), upon judgment signed against their public officer, or other person sued as representing such company or body, or against such company or body itself.

A *scire facias* was formerly resorted to in Chancery suits, when they became abated; but this mode became superseded in practice by the order of revivor, which see.

Scire facias for the Crown, the summary proceeding by extent is only resorted to when a Crown debtor is insolvent, or there is good ground for supposing that the debt may be lost by delay. In ordinary cases where a debt or duty appears by record to be owing to the Crown, the process for the Crown is a writ of *sci. fa. quare executionem non*; but should the defendant become insolvent pending this writ, the Crown may abandon the proceeding and resort to an extent.

Scire feci, the sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.

Scire propriè est rem ratione et per causam cognoscere. Co. Litt. 183; Lofft. 166.—(To know properly is to know the reason and cause of a thing.)

Scirewyte, the annual tax, or prestation paid to the sheriff for holding the assizes or county courts.—*Paroch. Antiq.* 573.

Scite, or **Site** [fr. *situs*, Lat.], the setting or standing on any place; the seat or situation of a capital messuage, or the ground whereon it stands.

SCTm., a common mode of writing Scitum, a decree of the Roman people.

Scold [*communis rixatrix*, Lat.], a troublesome and angry woman who, by brawling

and wrangling amongst her neighbours, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood. —4 *Steph. Com.* See CASTIGATORY.

Sconce, a mulct or fine.

Scot and Lot [fr. *sceat*, Sax., part, and *lot*], a customary contribution laid upon all subjects according to their ability. Whoever were assessed to any contribution, though not by equal portions, were said to pay scot and lot. —*Cowel.*

Scot and Lot Voters, voters in certain boroughs entitled to the franchise in virtue of their paying this contribution.—2 *Steph. Com.*

Scotal, or **Scotale,** an extortionate practice by officers of the forest who kept ale-houses, and compelled the people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7.

Scotch Judgments. See INFERIOR COURTS, and JUDGMENTS.

Scotch Peers, peers of the kingdom of Scotland; of these sixteen are elected by the rest and represent the whole body. They are elected for one parliament only. See 6 Anne c. 23, amended by 10 & 11 Vict. c. 52; 14 & 15 Vict. c. 87; and 15 & 16 Vict. c. 35.

Scotch Prisons. The law for their administration is consolidated by 23 & 24 Vict. c. 105. See also 28 & 29 Vict. c. 84; 31 & 32 Vict. c. 50; 32 & 33 Vict. c. 35.

Scotland, united to England by 5 Anne c. 8, May 1st, 1707.

Scotland and Ireland. As to service of writ, by leave of judge, upon a defendant resident in Scotland or Ireland, see R. S. C., Ord. XI., r. 1 (e), and r. 2. Process for compelling the attendance of witnesses from Scotland or Ireland before English Courts and *vice versâ* may be issued under 17 & 18 Vict. c. 34. Appeals from Courts in Scotland and Ireland are heard by the House of Lords under s. 3 of the App. Jur. Act, 1876, 39 & 40 Vict. c. 59, as before that Act.

The removal of Scotch and Irish poor from England to Scotland or Ireland is regulated by 8 & 9 Vict. c. 117, 10 & 11 Vict. c. 33 (Scotland); 24 & 25 Vict. c. 76 (Ireland); 25 & 26 Vict. c. 113, and 26 & 27 Vict. c. 89 (Ireland).

Scots, assessments by commissioners of sewers.

Scottare, to pay scot, tax, or customary dues.—*Cowel.*

Scottish Universities. The 21 & 22 Vict. c. 83, 22 & 23 Vict. c. 24, and 25 & 26 Vict. c. 28, provide for the better government and discipline of the Scottish Universities.

Scribere est agere. 2 Roll. R. 89.—(Writing is equivalent to doing.) In treason, for example, if treasonable words be set down in writing, this writing, as arguing more deliberate intention, has been held to be an overt act of treason. See *Broom's Leg. Max.*, 5th ed., 312.

Scrip, a certificate or schedule; also evidence of the right to obtain shares in a public company, sometimes called 'scrip-certificate,' to distinguish it from the real title to shares.

Script, a writing; the original or principal document.

Scriptæ obligationes scriptis tolluntur, et nudi consensûs obligatio, contrario consensu dissolvitur. Jur. Civ.—(Written obligations are superseded by writings, and an obligation of naked assent is dissolved by assent to the contrary.)

Scripture. The canonical books of the Old and New Testament. All profane scoffing of the Holy Scripture, or exposing any part thereof to contempt and ridicule, is punishable by fine and imprisonment (*Roscoe on Criminal Evidence*, 8th ed., p. 666), and by 9 & 10 Wm. III. c. 32, a conviction of a person educated in the Christian religion of having by writing or advised speaking denied the Divine authority of Scripture entails disqualification for any office ecclesiastical, civil, or military. See *Cowan* v. *Milburn*, *L. R.* 2 *Ex.* 230.

Scriptures, Copyright in, provided for by 54 Geo. III. c. 56, giving fourteen years certain, with an additional fourteen years, if the proprietor be then alive, and have not assigned his property. See also 13 & 14 Vict. c. 104; 21 & 22 Vict. c. 70; and COPYRIGHT.

Scrivener [fr. *scrivano*, Ital.; *escrivain*, Fr.], one who draws contracts; one whose business is to place out money at interest, receiving a bonus or commission for his trouble.

When a solicitor is the general depositary of money of his client and other persons who employ him, not simply in his character of solicitor, but as a money agent, to invest their money on securities at his discretion, allowing him procuration fees for any sum laid out on bond or mortgage, as well as a fee or charge for preparing the deeds, such a course of dealing is substantially the business of a scrivener.—1 *Holt*, 507; 3 *Camp.* 539.

Scroll, a mark which supplies the place of a seal.

Scroop's Inn, an obsolete law society, also called *Serjeant's Place*, opposite to St. Andrew's Church, Holborn, London.

Scutage, a tax or contribution raised by those that held lands by knight's service, towards furnishing the king's army, at the rate of one, two, or three marks for every

knight's fee.—*Steph. Com.*, 7th ed., i. 201; ii. 556, 557.

Scutagio habendo, a writ that anciently lay against tenants by knight's service to serve in the wars, or send sufficient persons, or pay a certain sum.—*F. N. B.* 83.

Scute, an ancient French gold coin of the value of 3*s.* 4*d.*

Scutella, a scuttle; anything of a flat or broad shape like a shield.—*Cowel.*

Scutella eleemosynaria, an alms-basket.

Scutum armorum, a shield or coat of arms. —*Cowel.*

Scyldwit, a mulct for any fault.

Scyra, a fine imposed upon such as neglected to attend the *scyre-gemot* courts, which all tenants were bound to do.

Scyre-gemot, or **Sciremot,** a court held by the Saxons twice every year, by the bishop of the diocese and the ealdorman in shires that had ealdormen; and by the bishop and the sheriff where the counties were committed to the sheriff, etc., wherein both the ecclesiastical and temporal laws were given in charge to the county.—*Seld. Titles Hon.* 628.

Sea. The main or high seas are part of the realm of England, for thereon the Courts of Admiralty have jurisdiction, but they are not subject to the Common Law. The main sea begins at the low water-mark, but between the high water-mark and the low water-mark, where the sea ebbs and flows, the Common Law and Admiralty have *divisum imperium*, an alternate jurisdiction; the one upon the water when it is full sea; the other upon the land when it is an ebb. The jurisdiction of the Admiralty within three miles of the low water-mark will be found elaborately discussed in *Reg.* v. *Keyn*, 2 *Ex. D.* 63; 46 *L. J. M. C.* 17. In that case it was held by a majority of seven judges to six, that the Central Criminal Court had no jurisdiction to try for manslaughter the foreign captain of a foreign ship, —the *Franconia*,—which in passing within three miles of the British shore, ran into a British ship and sank her; but this state of the law was soon afterwards altered by the Territorial Waters Jurisdiction Act, 1878, 40 & 41 Vict. c. 73. Section 2 of that Act enacts that any offence committed by a person, whether a British subject or not, within one marine league of the coast, 'although it may have been committed on board or by means of a foreign ship,' is an offence within the jurisdiction of the Admiralty.

Sea-batteries, assaults by masters in the merchant service upon seamen at sea.

Sea Birds Act, 32 & 33 Vict. c. 17.

Sea Fisheries Acts, 1868, 1875, 1888. 31 & 32 Vict. c. 45; 38 Vict. c. 15; 51 & 52 Vict. c. 54.

Sea-greens, grounds overflowed by the sea in spring-tides.—*Bell's Scotch Law Dict.*

Sea-laws, laws relating to the sea, as the laws of Oleron, etc.

Sea-letter, or **Sea-brief,** a document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination. See *Arnould on Mar. Ins.*, 6th ed., 627.

Sea Marks. See BEACON.

Seal, wax or wafer with an impression.

Seal, motion-day in the Court of Chancery, so called because every motion had to be stamped with the seal, which did not lie in Court in the ordinary sittings out of term; and was therefore specially brought in on days when motions were taken, called Seal-days. See GREAT SEAL; PRIVY SEAL.

Sealer [fr. *sigillator*, Lat.], an officer in Chancery who sealed writs and instruments. The offices of sealer and deputy-sealer are abolished by 15 & 16 Vict. c. 87, s. 23.

Seal Fishery Act, 1875, 38 & 39 Vict. c. 18. By this Act, provision is made to enable a close time to be established by Order in Council for the seal fishery in the seas adjacent to the eastern coasts of Greenland. The area to which the Act applies is specified in a Schedule to the Act.

Seal-paper, a document issued by the Lord Chancellor, previously to the commencement of the sittings, detailing the business to be done for each day in his court, and in the courts of the Lords Justices and Vice-Chancellors. The Master of the Rolls in like manner issued a seal-paper in respect of the business to be heard before him.—*Smi. Ch. Pr.* 9.

Seamen, persons engaged in navigating ships, barges, etc., upon the high seas. Those employed for this purpose upon rivers, lakes, or canals, are denominated watermen. A British seaman must be a natural-born subject, or be naturalised, or made a denizen, or have become a British subject by the conquest or cession of some newly-acquired territory; or (being a foreigner) have served on board Her Majesty's ships of war, in time of war, for the space of three years. But the Queen may by proclamation, during war, declare that foreigners who have served two years in the royal navy, during such war, shall be deemed British seamen.

Regulations have been enacted with respect to seamen, which differ in different countries; but in all they have been intended to obviate disputes between master and seaman as to the terms of the contract, to secure obedience to orders, and to interest the seamen in the voyage by making their earnings depend on its termination. See 17 & 18 Vict. c. 104,

s. 146 *et seq.* The statute law does not render a verbal agreement for wages void; but imposes a penalty on the master if a written agreement be not made. When a written agreement is made, it becomes the only evidence of a contract; and a seaman cannot recover anything agreed to be given, which is not specified in the articles. A seaman who is engaged to serve on board a ship is bound to exert himself to the utmost in the service of the ship; and, therefore, a promise made by the master of a ship in distress to pay an extra sum to a seaman, as an inducement to extraordinary exertion on his part, is held to be void. Neglect of duty, disobedience of orders, habitual drunkenness, or any cause which will justify the master in discharging a seaman, during a voyage, will also deprive the seaman of his wages. See REGISTRAR-GENERAL OF SEAMEN, and *Maude and Pollock*, or *Maclachlan on Shipping*; also *Chitty's Statutes*, vol. vi., tit. '*Shipping*.'

Seamen's wills. See WILLS.

Séance [Gr.], session, as of some public body.

Searcher, an officer of the customs, whose business it is to examine ships outward bound, in order to ascertain if they have any prohibited or unaccustomed goods on board, etc.

Searches, seekings in registries for entries. Official certificates of the result of certain official searches for entries of judgments are to be granted by the proper officer upon requisition duly made, and such certificates are conclusive in favour of a purchaser.—*Conveyancing Act*, 1882, 45 & 46 *Vict.* c. 39, s. 2.

As to searches in the register of 'land charges,' writs, and orders affecting land, and deeds of arrangement affecting land, see REGISTRATION OF CHARGES ON LAND.

Search warrant, an authority requiring the officer to whom it is addressed to search a house or other place therein specified, for stolen property therein reasonably suspected to be.—*Larceny Act*, 1861, 24 & 25 *Vict.* c. 96, s. 103.

Sea-reeve, an officer in maritime towns and places who takes care of the maritime rights of the lord of the manor, watches the shore, and collects the wreck.

Sea rovers, pirates and robbers at sea.

Seas, Beyond, at common law, not being in Great Britain; by statute, 19 & 20 Vict. c. 97, s. 12, with reference to the operation of certain statutes of limitation (see LIMITATION), not being in Great Britain, or Ireland, or the Channel Islands, or Isle of Man.

The statutes of limitation extend the period of limitation for cases of absence beyond seas; but this extension is almost wholly abolished by 19 & 20 Vict. c. 97, s. 10, and as respects actions to recover real property, by the Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57, s. 4.

Seas, Four. See FOUR SEAS.

Seashore, the space of land between high and low water-mark. See 1 *Steph. Com.*, 7th ed., 116, 452.

Seaworthy, a term applied to a ship, indicating that she is, in every respect, fit for her voyage. It is provided in all charter-parties that the vessel chartered shall be tight, staunch, and strong, well apparelled, furnished with an adequate number of mariners, sufficient tackle, provisions, etc. If the ship be insufficient in any of these particulars, the owners, though ignorant of the circumstance, will be liable for whatever damage may in consequence be done to the goods of the merchant, and if any insurance have been effected upon her it will be void. In a voyage policy a warranty of seaworthiness is implied, but not in a time policy.—*Dudgeon* v. *Pembroke*, 2 *App. Cas.* 284.

Seck, a warrant of remedy by distress.—*Litt.* s. 218. Also, barren or profitless. See RENT SECK.

Secondary, an officer who is next to the chief officer.—2 *Lill. Abr.* 506. Also an officer of the Corporation of London, before whom inquiries to assess damages are held, as before sheriffs in counties. See INQUIRY.

Secondary conveyances, those which presuppose some other conveyance precedent, and only serve to confirm, alter, retain, restore, or transfer the interest granted by the original conveyance. They are otherwise called derivative, and are:—(α) Releases; (β) Confirmations; (γ) Surrenders; (δ) Assignments; and (ε) Defeasances.

Secondary evidence, that species of proof which is admitted on the loss of primary evidence. There are no degrees of this evidence. For example, if a letter be lost it is as good to recite it from memory as to produce a copy. It is the province of the judge to decide whether a document produced be original or no, and until he decides it is not, no secondary evidence can be put in. See NOTICE TO ADMIT; NOTICE TO PRODUCE; HEARSAY.

Secondary use, a use limited to take effect in derogation of a preceding estate; otherwise called a shifting use, as a conveyance to the use of A. and his heirs, with a proviso that when B. returns from India, then to the use of C. and his heirs.—1 *Steph. Com.*

Second deliverance, Writ of, a judicial writ that lies, after a nonsuit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the re-delivery

of them if the distress be justified. It is a second writ of replevin, and is practically obsolete.—*F. N. B.* 68.

Second distress. By 17 Car. II. c. 7, s. 4, in all cases where the value of the cattle distrained were not found to be of the full value of the arrears distrained for, the party to whom such arrears are due might distrain again for the said arrears. The whole of this Act is repealed by the Statute Law Revision, etc., Act, 1881, 44 & 45 Vict. c. 59.

The Act did not apply to cases where there was enough which might have been taken upon the first, if the distrainer had then thought proper; such a second distress could never be justified, and was illegal; 'for a man who has an entire duty, as rent, for example, shall not split the entire sum, and distrain for one part of it at one time, and for the other part of it at another time, and so *toties quoties* for several times, for that would be great oppression.'

Second surcharge, Writ of. If after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharges the common again, the plaintiff may have this writ of second surcharge *de secundâ superoneratione*, which is given by the Stat. West. 2, 13 Edw. I. c. 8.

Seconds, assistants at a duel.

Secretaries of State, cabinet ministers attending the sovereign for the receipt and despatch of letters, grants, petitions, and many of the most important affairs of the kingdom, both foreign and domestic. There are five principal secretaries, one for the home department, another for foreign affairs, a third for the colonies, a fourth for war (26 & 27 Vict. c. 12), and a fifth for India (21 & 22 Vict. c. 106). These have under their management the most considerable affairs of the nation, and are obliged to attend on the sovereign when required; they receive and despatch whatever comes to their hands, be it for the Crown, the church, the army, private grants, pardons, dispensations, etc., as likewise petitions to the Crown, which, when read, are returned to the secretaries for answer; all which they despatch according to the sovereign's command and direction. Each of them has two under-secretaries, and one or more chief clerks, besides a number of other clerks and officers, wholly depending on them. The Secretaries of State have power to commit for treason and other offences against the State. Some say this power is incident to their office, and others that they derive it in virtue of being named in the commissions of the peace for every county in England and Wales. They have the custody of the signet, and the direction of the signet office and the paper office. Ireland is under the direction of a chief secretary to the Lord-Lieutenant, who has under him a resident under-secretary. —*Encyc. Lond.* See also 27 & 28 Vict. c. 34.

Secretary, one intrusted with the management of business; one who writes for another; an officer attached to a public establishment.

Secretary of Decrees and Injunctions, an officer of Chancery. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Secta [fr. *sequendo*, Lat.], the witnesses or followers of a plaintiff.

Secta ad curiam, a writ that lay against him who refused to perform his suit either to the county court or the court-baron.—*Cowel.*

Secta ad furnum, suit to a public oven, or bakehouse. Abolished.

Secta ad justiciam faciendam, a service which a man is bound to perform by his fee. —*Bract.*

Secta ad molendinum, a writ that lay where a man, by usage, had ground his corn at the mill of a certain person, and afterwards went to another mill with his corn, thereby withdrawing his suit to the former.—*F. N. B.* 123. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Secta ad torrale, suit to a kiln or malthouse. Abolished.

Secta curiæ, suit and service done by tenants at the lord's court.—*Cowel.*

Secta est pugna civilis; sicut actores armantur actionibus, et quasi gladiis accinguntur ita rei muniuntur exceptionibus et defenduntur quasi clypeis. Hob. 20.—(A suit is a civil warfare; for as the plaintiffs are armed with actions and as it were girded with swords, so the defendants are fortified with pleas, and are defended as it were by shields.)

Sectâ faciendâ per illam quæ habet eniciam partem, a writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and services for all the coparceners.—*Reg. Orig.* 177.

Secta non faciendis, a writ for a woman, who, for her dower, ought not to perform suit of court.—*Reg. Orig.* 174.

Secta quæ scripto nititur à scripto variari non debet. Jenk. Cent. 65.—(A suit which is based upon a writing ought not to vary from the writing.)

Secta regalis, a suit or service by which all persons were bound twice in a year to attend the sheriff's tourn.

Sectâ unicâ tantum faciendâ pro pluribus hæreditatibus, a writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.—*Cowel.*

Sectares, bidders at an auction.—*Civ. Law.*

Sectatores, suitors of court who, amongst the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law.—1 *Reeve's Hist. Eng. Law*, 22.

Secular, not spiritual; relating to affairs of the present world (*in seculo*).

Secular clergy, parochial clergy who perform their ministry *in seculo*; and were contradistinguished from the regular clergy. See REGULAR CLERGY.—*Steph. Com.*

Secundâ superoneratione pasturæ. See SECOND SURCHARGE, WRIT OF.

Secundum naturam est, commoda cujusque rei eum sequi, quem sequuntur incommoda. D. 50, 17, 10.—(It is natural that the advantages of anything should follow him whom the disadvantages follow.)

Secundum statutum. See APPEARANCE, SEC. STAT.

Secundum subjectam materiam, with reference to the subject matter. The meaning of a word or phrase often depends on the subject about which it is used; for instance, the word layman (*q.v.*), if it be used in a conversation concerning the church, means one who is not a clergyman; if it be used in a conversation about the law, it means one who is not a lawyer.

Securitatem inveniendi, etc., an ancient writ, lying for the sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the commonwealth as the Crown shall think fit.—*F. N. B.* 115.

Securitatis pacis, a writ that lay for one who was threatened with death or bodily harm by another, against him who so threatened.—*Reg. Orig.* 88.

Security for Costs. At *common law*, if a plaintiff, whether suing in an individual or a representative capacity, and whether for his own benefit or that of another, resided abroad, or even in Ireland or Scotland (but see now *infra*), the Court or a judge, upon application, would stay the proceedings until he gave security for costs, and this although the defendant had no defence on the merits.

In *Chancery*, security for costs could be obtained under similar circumstances. If it appeared by the bill that the plaintiff was abroad, the application was either by motion or petition as of course; but otherwise it must have been made upon notice of motion, supported by an affidavit of the facts. The application should have been made as soon as the defendant was aware of the plaintiff's absence; for should he take another step in the suit, after knowing it, he waived all right to security. A bond was given to a clerk of records and writs in the penal sum of 100*l*.—*Smi. Ch. Pr.* 772.

The Rules under the Judicature Acts make no change with reference to the subject of security for costs.

If a second action of ejectment for the same premises be brought, proceedings will be stayed until security be given.—*C. L. P. Act*, 1854, s. 93.

Since the passing of the Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), a plaintiff residing in Scotland or Ireland is no longer required to find security for costs. See *Raeburn* v. *Andrews*, *L. R.* 9 *Q. B.* 118, and 43 *L. J. Q. B.* 73.

Security for good behaviour or abearance. See KEEPING THE PEACE.

Security for keeping the peace. See KEEPING THE PEACE.

Security of the Crown. See 11 & 12 Vict. c. 12.—4 *Steph. Com.*

Secus [Lat.], contrariwise.

Se defendendo, Homicide, excusable manslaying in defence of one's own life, when attacked and put in jeopardy.—4 *Steph. Com.*

Sede plenâ, when a bishop's see is not vacant.

Sederunt, Acts of, ordinances of the Court of Session in Scotland, made originally under authority of the statute, 1540, c. 93, by which authority is given to the Court to make such regulations as may be necessary for the ordering of processes and the expediting of justice. A quorum of nine judges is necessary.—48 *Geo. III.* c. 151, s. 11. Various modern Acts give the Court power to pass such Acts, which may be said to be equivalent to the *Regulæ Generales* of the English Courts.

Sedition, an offence against the Crown and government, not capital, and not amounting to treason. All contempts against the sovereign and the government, and riotous assemblies for political purposes, may be ranked under the head of sedition. See 39 Geo. III. c. 79; 57 Geo. III. c. 19; 9 & 10 Vict. c. 33; and 4 *Steph. Com.*

Seditious libel. See 60 Geo. III and 1 Geo. IV. c. 8; and 4 *Steph. Com.*

Seducing to leave service, an injury for which a master may have an action on the case. See STATUTE OF LABOURERS.

Seduction. An action of seduction may be brought by a parent or person standing *in loco parentis* for the debauching of his daughter, and getting her with child; *per quod servitium amisit.* A master also, not standing in the relation of a parent, may maintain this action for debauching his servant. The woman herself has no right of action. In ascertaining the amount of damages, the jury should regard not merely the

injury sustained by the loss of service, but also the wounded feeling of the parent or person standing *in loco parentis*.

See [fr. *sedes*, Lat.], the diocese of a bishop.

Seeds Adulteration Act, 1869, 32 & 33 Vict. c. 112.

Seignior, or **Seigneur**, a lord of a fee or manor.

Seignior in gross, a lord without a manor, simply enjoying superiority and services.

Seigniorage, a royalty or prerogative of the Crown, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed.

Seigniory, a manor or lordship.

Seised. See TENURE.

Seisin, possession.

There is a seisin in deed, as when an actual possession is taken; or in law, where lands descend, and one has not actually entered upon them.

Seisin, Livery of, delivery of possession, called by the Feudists investiture.

Seisina facit stipitem. Wright's Ten. 185. —(Seisin makes the heir.) But see now 3 & 4 Wm. IV. c. 106, and *Broom's Legal Maxims*, 6th ed., 489.

Seisinâ habendâ, etc., a writ for delivery of seisin to the lord, of lands and tenements, after the sovereign, in right of his prerogative, had had the year, day, and waste on a felony committed, etc.—*Reg. Orig.* 165.

Seizing of heriots, taking the best beast, etc., where an heriot is due, on the death of the tenant. It is a species of self-remedy, not much unlike that of taking goods or cattle in distress; but, in the latter case, they are seized as a pledge, in the former, as the property of the person for whom seized.

Seizure of goods for offences. No goods of a felon or other offender can be taken to the use of the Crown before they are forfeited. There are two kinds or seizure: (1) *verbal*, to take an inventory, and charge the town or place where the owner is indicted for the offence; and (2) *actual*, which is taking them away after conviction.—3 *Inst.* 103. Forfeiture for treason or felony has now been abolished by 33 & 34 Vict. c. 23.

Sel, denotes the bigness of a thing to which it is added, as *Selwood*, a big wood.

Selda [fr. *selde*, Sax., a seat], a shop, shed, or stall in a market; a wood of sallows or willows; also a saw-pit.—*Co. Litt.* 4.

Select Vestry Act, called also Sturges Bourne's Act, 59 Geo. III. c. 12.

Selecti judices, Roman judges returned by the prætor, drawn by lot, and subject to be challenged and sworn like our juries.—3 *Bl. Com.* 366.

Self-defence. Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide, if committed *se defendendo*, or in order to preserve them. See DEFENCE; HOMICIDE.

Self-murder, or **Self-slaughter**. See FELO DE SE.

Selion of land, a ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less.—*Termes de la Ley*.

Semble [abbrev. *semb.* or *sem.*, Fr.] (*it seems*). Used in reports to show that a point is not decided directly, but may be inferred from the decision.

Semestria, the collected decisions of the emperors in their councils.—*Civ. Law*.

Seminaufragium, half shipwreck, as where goods are cast overboard in a storm; also, where a ship has been so much damaged that her repair costs more than her worth.

Semi-plena probatio, a semi-proof; the testimony of one person, upon which the civilians would not allow any sentence to be founded.

Semper in dubiis benigniora præferenda.—(In doubtful matters the more liberal construction is to be preferred.)

Semper in obscuris, quod minimum est sequimur. D. 50, 17, 9.—(In obscure constructions we always apply that which is least obscure.) See per Maule, J., in *Williams* v. *Crosling*, 3 *C. B.* 962.

Semper ita fiat relatio ut valet dispositio. 6 Co. 76.—(Let the reference always be so made that the disposition may avail.)

Semper præsumitur pro legitimatione puerorum; et filiatio non potest probari. Co. Litt. 126 *a*.—(The presumption is always in favour of the legitimacy of children, and filiation cannot be proved.)

Semper præsumitur pro matrimonio.—(The presumption is always in favour of the validity of a marriage.)

Semper præsumitur pro negante.—(The presumption is always in favour of the negative.) See 10 *Cl. & Fin.* 534. On an equal division of votes in the House of Lords the question passes in the negative.

Semper præsumitur pro sententiâ. 3 Buls. 42.—(Presumption is always for the sentence.)

Semper specialia generalibus insunt. D. 50, 17, 147.—(Generalities include specialities.)

Sen, justice.—*Co. Litt.* 61 *a*.

Senage, a money paid for synodals.

Senators of the College of Justice. The judges of the Court of Session in Scotland are called Senators of the College of Justice.—*Act*, 1540, c. 93.

Senatus consulta (*ordinances of the senate*),

public acts among the Romans, which regarded the whole community.—*Sand. Just.*, 7th ed., xxiv. 9.

Senatus decreta (*decisions of the senate*), private acts, which concerned particular persons or personal matters.—*Civ. Law.*

Seneschal [*sein*, Germ., a house; and *schale*, an office], a steward; also one who has the dispensing of justice.—*Co. Litt.* 61 *a*; *Kitch.* 13; *Croke's Jurisd.* 102.

Seneschallo et mareshallo quod non teneat placita de libero tenemento, a writ addressed to the steward and marshal of England, inhibiting them to take cognizance of an action in their court that concerns freehold.—*Reg. Orig.* 185. Abolished.

Seneucia, widowhood.—*Cowel.*

Seney-days, play-days, or times of pleasure and diversion.—*Cowel.*

Sensu honesto, to interpret words *sensu honesto* is to take them so as not to impute impropriety to the persons concerned.

Sensus verborum est anima legis. 5 Co. 2. —(The meaning of the word is the spirit of the law.)

Sensus verborum est duplex, mitis et asper et verba semper accipienda sunt in mitiore sensu. 4 Co. 13.—(The meaning of words is twofold, mild and harsh; and words are to be received in their milder sense.)

Sensus verborum ex causâ dicendi accipiendus est; et sermones semper accipiendi sunt —secundum subjectam materiam. 4 Co. 14.—(The sense of words is to be judged of with reference to the cause of their being spoken; and discourses are always to be interpreted according to the subject-matter.)

Sentence of a Court, a definite judgment pronounced in a cause or criminal proceeding. The sentence of a Court may be dispensed with in two ways: by the pardon of the Crown, and by a finding of insanity under 27 & 28 Vict. c. 29. See ASYLUM.

Sentence of death recorded. This being entered on the record, has the same effect as if it had been pronounced and the defender reprieved. It is now disused.

Sententia contra matrimonium nunquam transit in rem judicatam. 7 Co. 43.—(A sentence against marriage never becomes a matter finally adjudged, i.e., *res judicata.*)

Sententia facit jus, et legis interpretatio legis vim obtinet. Ellesm. Postn. 55.—(Judgment creates right, and the interpretation of the law has the force of law.)

Sententia facit jus, et res judicata pro veritate accipitur. Ellesm. Postn. 55.—(Judgment creates right, and what is adjudicated is taken for truth.)

Sententia interlocutoria revocari potest, definitiva non potest. Bacon; Max. Reg. 20. —(An interlocutory judgment may be recalled, but not a final.)

Sententia non fertur de rebus non liquidis; et oportet quod certa res deducatur in judicium. Jenk. Cent. 7.—(Judgment is not given on things not liquidated; and things ought to be certain which are brought into court.)

Separaliter [Lat.] (*separatively or distributively*).

Separate estate. The Common Law did not allow a married woman to possess any property independently of her husband, but when property was settled to her separate use and benefit, equity treated her, in respect to that property, as a *feme sole*, or unmarried woman. (See *Tullet* v. *Armstrong*, 1 *Beav.* 1.) A wife's separate property might be acquired by a pre-nuptial contract with her husband, or by gift, either from the husband, or from any other person. The Married Women's Property Act, 1882 (see MARRIED WOMEN'S PROPERTY), has almost abolished the Common Law distinction between married and unmarried women in respect of property, and provides that 'every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.' But marriage and other settlements prior to that Act frequently contain, and, though made after that Act, may still contain (see s. 19 of the Married Women's Property Act, 1882) restrictions against the 'anticipation' of her settled property by a married woman. These restrictions are perfectly valid, but they are subject to the important relaxation, under s. 39 of the Conveyancing Act, 1881, 44 & 45 Vict. c. 41, that the Chancery Division of the High Court may, if it thinks fit, where it appears to the Court for the benefit of a married woman, bind her interest in any property, with her consent, notwithstanding that she is restrained from anticipation.

Separation. If a husband and wife cannot agree so as to carry out the purpose of their union—mutual love and respect—they may resolve to live apart. A deed of separation, containing the terms and conditions upon which an *actual* and *immediate* separation is to be arranged, will be valid, so far as relates to the trusts and covenants of the husband, and his indemnity by the trustees for the wife; but if it contemplate a *contingent* or *future* separation it is void, as opposed to the policy of marriage, and the well-being of the community.

The trustees usually covenant with the husband, to indemnify him against any debts which the wife may incur during the separa-

tion, whereupon the husband covenants to provide a given maintenance for the wife, which will secure the deed from being upset by his creditors or subsequent purchasers for value, the trustees' indemnity being a valuable and binding consideration validating the settlement. The absence of this indemnity renders the deed void as against creditors and subsequent purchasers; unless the consideration be the relinquishment by the wife of her alimony, or the compromise of a suit by the wife, either of which would be valuable and binding.

A mere agreement for a separation will not be specifically enforced in equity by a decree establishing it personally, whether the covenants be or be not binding on the husband and trustees; for the effect of the decree would be to make them binding on the wife, and to make married people to effect, at their pleasure, a partial dissolution of their solemn contract.

If, after the separation, the husband and wife will be reconciled, and live together again, that circumstance will put an end to the agreement, and determine the separate allowance.

See further HUSBAND AND WIFE, and JUDICIAL SEPARATION.

Separation of benefices, etc. See 1 & 2 Vict. c. 106; 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; and 19 & 20 Vict. c. 104.

Separatists, seceders from the church. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. See 3 & 4 Wm. IV. c. 82 Oaths Act, 1888, 510, 52 Vict. c. 46; and AFFIRMATION.

Separia, several or severed and divided from other ground—*Paroch. Antiq.* 336.

Sepoy, or **Sipoy** [fr. *sip.*, Hind., a bow and arrow], a native Indian soldier.

Septennial Act, 1 Geo. I. st. 2, c. 38. The Act by which a Parliament has continuance for seven years and no longer unless sooner dissolved,—as it always has, in fact, been since the passing of the Act.

Septuagesima, the third Sunday before *Quadragesima* Sunday in Lent, being about the 70th day before Easter.

Septum, an enclosure; any place paled in. —*Cowel.*

Sepultura, an offering to the priest, for the burial of a dead body.

Sequamur vestigia patram nostrorum. Jenk. Cent.—(Let us follow the footsteps of our fathers.)

Sequatur sub suo periculo, a writ that lay where a summons *ad warrantizandum* was awarded, and the sheriff returned that he had nothing whereby he might be summoned: then issued an *alias* and a *pluries*, and if he came not in on the *pluries*, this writ issued. —*O. N. B.* 163.

Sequela causæ, the process and depending issue of a cause for trial.—*Cowel.*

Sequela curiæ, suit of court.—*Cowel.*

Sequela molendina. See SECTA AD MOLENDINUM.

Sequela villanorum, the family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.—*Paroch. Antiq.* 216.

Sequels, small allowances of meal, or manufactured victual, made to the servants at a mill where corn was ground, by tenure, in Scotland. See THIRLAGE.

Sequendum et prosequendum, to follow and prosecute a cause.

Sequester, to renounce; to set aside from the use of the owners.

Sequestrari facias de bonis ecclesiasticis, Writ of, a process of execution issued against a beneficed clerk, commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of the defendant, he has levied the plaintiff's debt. It is in the nature of a *levari facias.*—2 *Chit. Arch. Prac.*, 12th ed., 1284. A similar writ issued out of Chancery, directed to the bishop of the diocese in which the rectory or vicarage of a beneficed clerk is situate, commanding him to enter into and hold the benefice and sequester until he has levied, etc., the sum which the beneficed clerk has been ordered to pay. Before this writ can be issued, the person to whom such money is to be paid must have sued out a writ of *fieri facias* or *elegit*, and the sheriff must have returned that the person against whom such writ issued is a beneficed clerk, and has no goods or chattels in his bailiwick, and the writ and return must have been filed.—*Consol. Ord.* 1860, xxix., r. 11.

The Rules of the Supreme Court provide that this writ may be issued and executed in the same cases and in the same manner as theretofore.

The 34 & 35 Vict. c. 45, provides that on sequestration, the bishop of the diocese shall appoint a curate and assign a stipend, as defined in the 34 & 35 Vict. c. 44.

Sequestratio, the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it; it is twofold—*voluntary*, done by consent of all parties; and *necessary*, when a judge orders it.—*Civil Law.*

Sequestration. This is a prerogative process (formerly confined to the Court of Chancery, and the Courts of Probate and Divorce),

addressed to certain commissioners, empowering them to enter upon real estates, and sequester the rents, and upon the goods, chattels, and personal estate of a person in contempt for disobedience of a decree or order, and keep the same until the defendant clear his contempt. It has no return, and is granted upon a return of *non est inventus* by the serjeant-at-arms, or by a sheriff on an attachment.—*Consol. Ord.* 1860, xxix., r. 3; 1 *Eq. Rep.* 261. As against peers, members of parliament, and corporations, the sequestration is *nisi* only in the first instance. The sequestrators are officers of the court, and amenable thereto, and act from time to time in the execution of their office as the court directs; they account for what comes to their hands, and bring the money into court to be put out at interest, etc.; this money is not paid to the plaintiff, but remains in court till the defendant has appeared or answered and cleared his contempt, and then whatever has been seized is accounted for and paid over to him; the Court, however, may act as is most agreeable to the equity of the case.—*Smi. Ch. Pr.* 121, and *Dan. Ch. Pr.*, 5th ed., 908. See R. S. C. 1883, Ord. XLIII., r. 6.

Sequestration of a benefice. See SEQUESTRARI FACIAS.

Sequestro habendo, a judicial writ for the discharging a sequestration of the profits of a church benefice, granted by the bishop at the sovereign's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the sequestration. —*Reg. Judic.* 36.

Sequi debet potentia justitiam, non præcedere. 2 Inst. 454.—(Power should follow justice, not precede it.)

Serf, the slave of feudalism. See SERVI.

Sergeanty, or **Seargeanty**, or **Searjeanty**, a service anciently due to the Crown for lands held of it, and which could not be due to any other lord. It was divided into *grand* and *petit*. See TENURE.

Seriatim [Lat.] (*severally*, and in order).

Serjeant, or **Serjeants** [fr. *serviens*, Lat.], used in several senses:—

(1) *Serjeants-at-law*, or *of the coif* (*servientes ad legem*), otherwise called serjeants counter, the highest degree in the Common Law, as doctors in the civil law; but, according to Spelman, a doctor of law is superior to a serjeant, for the very name of a doctor is magisterial, but that of a serjeant is only ministerial. Serjeants-at-law are made by the Queen's writ, addressed unto such as are called, commanding them to take upon them that degree by a certain day.—*Fortescue*, c. 50; 3 *Cro.* 1; *Dyer*, 72; 2 *Inst.* 213.

The monopoly enjoyed by the serjeants in the Court of Common Pleas, during term time, ineffectually attempted to be abolished by Royal Warrant in 1834 (see *In the Matter of the Serjeants-at-law*, 6 *B. N. C.* 235), was abolished in 1846 by 9 & 10 Vict. c. 54.

The Judges of the Common Law Courts were formerly required to take or to have taken the degree of Serjeant-at-law; but by the Judicature Act, 1873, s. 8, that requirement is dispensed with in the case of any person appointed a judge of the High Court of Justice or of the Court of Appeal; and since 1868 no person, except a Judge Designate, has taken the degree, which, however, has never been formally abolished.

(2) *Serjeants-at-arms*, officers attending the sovereign's person to arrest individuals of distinction offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, etc. Two of these, by the royal permission, attend on the two Houses of Parliament, and each has a deputy; the office of him in the House of Commons is the keeping of the doors, and the execution of such commands, touching the apprehension and taking into custody of any offender, as the House shall enjoin him. Another of them attended the Court of Chancery, and one on the Lord Treasurer of England; also one upon the Lord Mayor of London on extraordinary solemnities, etc. They are in old books called *virgatories*, because they carried the silver rods gilded, as they now do maces, before the sovereign.—*Fleta*, l. 2, c. 38.

(3) *Serjeants of the household* were officers who executed several functions within the royal household.—33 *Hen. VIII.* c. 12.

(4) *The Common Serjeant*, a judicial officer in the city of London, who attends the Lord Mayor and Court of Aldermen on court days, and is in council with them on all occasions within or without the precincts or liberties of the city. He acts as one of the judges of the Central Criminal Court.

(5) *Inferior serjeants*, such as serjeants of the mace in corporations, officers of the county; and there are serjeants of manors, of the police, etc.

Serjeantia idem est quod servitium. Co. Litt. 105.—(Serjeanty is the same as service.)

Serjeants' Inn. A society consisting of the entire body of serjeants-at-law, which includes all the Common Law judges appointed before the commencement of the Judicature Acts. Their property in Chancery Lane was sold by auction in 1877, and the proceeds, 57,000*l.*, divided amongst the then members of the society. See title SERJEANT.

Sermo index animi. 5 Co. 118.—(Speech is an index of the mind.)

Sermo relatus ad personam intelligi debet de conditione personæ. 4 Co. 16.—(A speech relating to a person is to be understood as relating to his condition.) Thus, saying to an attorney that he is known to deal corruptly, is to be understood as meaning that he deals corruptly in his office of an attorney. See *Birchley's case*, 4 Co. 16.

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum. 4 Co. 14.—(Language is always to be understood according to its subject-matter, and the condition of the persons.) See SECUNDUM SUBJECTAM MATERIAM.

Servage, when a tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. King John brought the Crown of England in servage to the see of Rome.—2 *Inst.* 174; 1 *Ric. II.* c. 6.

Servants. See MASTER AND SERVANT.

Servi, bondmen, or servile tenants.

They were of four sorts: (1) Such as sold themselves for a livelihood. (2) Debtors sold because they were unable to pay their debts. (3) Captives in war, retained, and employed as perfect slaves. (4) *Nativi*, servants born as such, solely belonging to the lord. There were also said to be *servi testamentales*, those which were afterwards called covenant-servants.—*Cowel.*

Servi redemptione [Lat.], criminal slaves in the time of Henry I.—1 *Kemble's Saxons*, 197 (1849).

Service [fr. *servitium*, Lat.], that duty which a tenant, by reason of his estate, owes to his lord. There are many divisions of this duty in our ancient law books, as into personal and real, which is either *urbane* or *rustic*, free and base, continual or annual, casual and accidental, intrinsic and extrinsic, certain and uncertain, etc. See TENURE.

The formal mode of bringing a writ or other process, or a notice in a suit, to the knowledge of the person affected by it.

The service of writs of summons is regulated by R. S. C. 1883, Ord. IX., which by r. 1 dispenses with service, when (*as is usual*) the defendant, by his solicitor, agrees to accept service, and enters an appearance. By r. 2, service, when required, must be personal, unless an order for 'substituted service, or the substitution of notice for service,' be made. Personal service is effected by tendering a copy of the writ to the defendant, and producing the original if required by him.

Service of notices previous to a landlord's ejectment of a tenant for a forfeiture, and of other notices required by the Conveyancing Act, 1881, may be effected by registered letter through the post by s. 67, subs. 4, of that Act.

As to address for service, see INDORSEMENT OF ADDRESS, as to plaintiffs; and as to defendants, see APPEARANCE.

As to the expression 'service by post' in a statute passed after Jan 1st, 1890, by s. 26 of the Interpretation Act, 1889, 'Service is deemed to be effected on properly addressing, prepaying, and posting a letter containing the document' to be served, 'and unless the contrary is proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post.'

Service of an heir. By the law of Scotland, before an heir can regularly acquire a right to the ancestor's estate, he ought to be served heir. See *Bell's Scotch Law Dict.*

Service out of the jurisdiction of a writ of summons, may be allowed by the court or a judge where the contract sued upon was entered into within the jurisdiction, etc., etc. —*R. S. C.* 1883, *Ord. XI.* And see *Ib.*, for restriction upon the allowance of such service upon a defendant resident in Scotland or Ireland.

Service, Secular, worldly service, as contrasted with spiritual or ecclesiastical.—*Cowel.*

Serviens ad legem, serjeant-at-law, *q.v.*

Servientibus, certain writs touching servants and their masters violating the statutes made against their abuses.—*Reg. Orig.* 189.

Servient tenement, an estate in respect of which a service is owing, as the *dominant tenement* is that to which the service is due.

Servile est expilationis crimen; sola innocentia libera. 2 Inst. 573.—(The crime of theft is slavish; innocence alone is free.) See also *Lofft.* 214.

Servitia personalia sequuntur personam. 2 Inst. 374.—(Personal services follow the person.)

Servitium feodale et prædiale, a personal service, but due only by reason of lands which were held in fee.—*Bract.* l. 2, c. 16.

Servitium forinsecum, a service which did not belong to the chief lord, but to the king. —*Mon. Angl.* ii. 48.

Servitium, in lege Anglicæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui. Co. Litt. 65.—(Service, by the law of England, means the service which is due from the tenants to the lords by reason of their fee.)

Servitium intrinsecum, that service which was due to the chief lord alone from his tenants within his manor.—*Fleta*, l. 3.

Servitium liberum, a service to be done by feudatory tenants, who were called *liberi homines*, and distinguished from vassals, as was their service, for they were not bound to any of the base services of ploughing the lord's

land, etc., but were to find a man and horse, or go with the lord into the army, or to attend the court, etc. It was called also *servitium liberum armorum.*

Servitium regale, royal service, or the prerogatives that, within a royal manor, belonged to the lord of it; which were generally reckoned to be the following—viz., power of judicature in matters of property, and of life and death in felonies and murders; right to waifs and estrays; minting of money; assize of bread and beer, and weights and measures. —*Paroch. Antiq.* 60.

Servi testamentales, covenant servants.

Servitiis acquietandis, a judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.—*Reg. Judic.* 27.

Servitor, a serving man: particularly applied to students of Christ Church, Oxford, upon the foundation, similarly to sizars at Cambridge.

Servitor of bills, servants or messengers of the Marshal of the Queen's Bench, who were sent abroad with writs, etc., to summon persons to that court.—2 *Hen. IV.* c. 23.

Servitudes, burdens affecting property in Scotland; resembling easements in England.

In the civil law certain portions or fragments of the right of ownership separated from the rest, and enjoyed by persons other than the owner of the thing itself. As to its various kinds, see *Sand. Just.*, 7th ed., 119—136.

Servitus est constitutio jure gentiam quâ quis domino alieno contra naturam subjicitur. Co. Litt. 116.—(Slavery is an institution by the law of nations, by which a man is subjected to a foreign master, contrary to nature.)

Sess or **Assess**, rate, tax.

Session, Court of, in Scotland, the supreme civil court of Scotland, instituted A.D. 1532, and formerly consisting of fifteen judges—that number being reduced in 1830, by 11 Geo. IV. and 1 Wm. IV. c. 69, s. 20, to thirteen; viz., the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. This court is required, by 48 Geo. III. c. 151, to sit in two divisions; the Lord President, with three ordinary lords, forms the first division; and the Lord Justice-Clerk and three other ordinary lords, form the second division. There are five permanent Lords Ordinary, attached equally to both divisions, the last appointed of whom officiates on the bills, i.e., petitions to the court during session, and performs the other duties of junior Lord Ordinary. The chambers of the Parliament House, in which the First and Second Divisions of the Court of Session hold their sittings, are called the Inner House; those in which the Lords Ordinary sit, as single judges, to hear motions and causes, are collectively called the Outer House. The nomination and appointment of the judges is in the Crown. No one can be appointed who has not served as an advocate or principal clerk of session for five years, or a writer to the signet for ten years. Reference may be made to *Shand's Practice of the Court of Session*; but the practice has been considerably altered by recent statutes. See 20 & 21 Vict. c. 56; 31 & 32 Vict. c. 100; and *Scott & Brand's Court of Session Act*, 1868. See also JUSTICIARY, HIGH COURT OF.

Session, Great, of Wales, a court which was abolished by 1 Wm. IV. c. 70; the proceedings now issue out of the courts at Westminster, and two of the judges of the superior courts hold the circuits in Wales and Cheshire, as in other English counties. The jurisdiction of the Great Session of Wales, which was first established by Henry VIII., was similar to that of Judges of Assize in England. Latterly it was exercised by two barristers, who sat for eighteen days only, into which period all the litigious business had to be compressed.

Session of Parliament, the sitting of the Houses of Lords and Commons, which are continued, day by day, by adjournment, until the parliament is prorogued or dissolved. See PARLIAMENT.

Sessional divisions of counties. See 9 Geo. IV. c. 43; 10 Geo. IV. c. 46; 6 & 7 Wm. IV. c. 12; 22 & 23 Vict. c. 65.

Sessions, a sitting of justices of the county in court upon their commissions, as the sessions of oyer and terminer, gaol delivery, etc.

Sessions of the peace, sittings of justices of the peace for the execution of those powers which are confided to them by their commission, or by charter, and by numerous statutes. They are of four descriptions:—

I. Petty sessions.

Every meeting of two or more justices in the same place, for the execution of some power vested in them by law, whether had on their own mere motion, or on the requisition of any party entitled to require their attendance in discharge of some duty, is a petty or petit session. The occasions for holding petty sessions are very numerous; among the most important of which is the bailing persons accused of felony, which may be done after a full hearing of evidence on both sides, where the presumption of guilt shall either be weak in itself, or weakened by the proofs adduced on behalf of the prisoner.

As to the right of the public to attend petty sessions, it is settled, that in cases of *preliminary* inquiry, as where magistrates sit

to determine whether they shall bail or commit a party accused of felony or misdemeanour, no person, as one of the public, can claim, as of right, to be present. The 6 & 7 Wm. IV. c. 114, allowing counsel to address the jury for prisoners at their trial, does not alter the law in this respect. But when magistrates sit to *adjudicate*, as upon a proceeding for a penalty, the place in which they sit is an open court of justice, to which all persons have a right of access, and from which no one may be lawfully removed, so long as he conducts himself with propriety. See 22 & 23 Vict. c. 65.

II. Special sessions.

A special session is a sitting of two or more justices, holden not of their own mere motion and private agreement, but on a particular occasion for the execution of some given branch of their authority, after reasonable notice to all the other magistrates of the hundred or other division of the county, city, etc., for which it is convened and holden, has been served personally or by post, subject to 7 & 8 Vict. c. 33.

There are several special sessions required by law to be held at particular periods; as for appointing overseers of the poor, by 43 Eliz. c. 2, and 54 Geo. III. c. 91, on the 25th March, or within fourteen days after; by 9 Geo. IV. c. 61, for licensing ale-houses and victualling-houses to sell excisable liquors by retail to be drunk or consumed on the premises, on some day between 20th August and 14th September inclusive, except in Surrey and Middlesex, where the meetings must be held within the first ten days of March; for appointing the days of holding not less than eight, nor more than twelve, special sessions in the year, for executing the purposes of the Highway Act, which, by 5 & 6 Wm. IV. c. 50, s. 45, are to be so appointed at a special sessions to be held within fourteen days after every 20th March; and for hearing appeals against poor-rates, giving at least twenty-eight days' notice before the holding of the same, in pursuance of 6 & 7 Wm. IV. c. 96, s. 6, special petty session of the peace in their several divisions, for the appointment of parochial constables; of which session due notice shall be given to every justice usually acting in that division.

III. General sessions of the peace is a court of record held before two or more justices, for execution of the general authority given to justices by the commission of the peace and certain Acts of Parliament. The only description of general sessions which is now usually held is the Court of General Quarter Sessions; but in the counties of Middlesex, Lancaster, and the West Riding of York, besides the four quarter sessions, four general sessions are held in the intervals, and in the first original intermediate sessions occasionally take place. A general session may be called by any two justices within the jurisdiction, one being of the *quorum* or by the *custos rotulorum*, and one justice; but not by one justice or by the *custos rotulorum* alone. The presence of two justices is necessary to its being held or even adjourned so as to hold it legally at another time.

IV. General quarter sessions is a court of oyer and terminer, and a court of record, and not a court of inferior jurisdiction.

The jurisdiction of the court of quarter sessions is criminal and civil, and arises from the commission of the peace itself, as settled under 18 Edw. III. c. 2, and 34 Edw. III. c. 1.

By 5 & 6 Vict. c. 38, intituled, 'An Act to define the jurisdiction of Justices in General and Quarter Sessions of the Peace,' it is enacted that neither the justices of the peace for any county, nor the recorder of any borough, shall at any sessions of the peace try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by penal servitude for life, or for:

(1) Misprision of treason.

(2) Offences against the Queen's title, or government, etc.

(3) Offences subject to the penalties of *præmunire*.

(4) Blasphemy and offences against religion.

(5) Administering or taking unlawful oaths.

(6) Perjury and subornation of perjury.

(7) Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanour.

(8) Forgery.

(9) Unlawfully and maliciously setting fire to crops of corn, etc.

(10) Bigamy, and offences against the laws relating to marriage.

(11) Abduction of women and girls.

(12) Concealment of birth.

(13) Offences against the laws relating to bankrupts. This, however, has now been repealed by 32 & 33 Vict. c. 62, s. 20.

(14) Libels.

(15) Bribery.

(16) Unlawful combinations and conspiracies, except conspiracies and combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.

(17) Stealing or injuring records or documents belonging to any court of law.

(18) Stealing or destroying, or concealing

wills or documents containing evidence of title to real estate.

Subject to the above restrictions, it seems clear that where an offence is created, and declared a misdemeanour by a statute passed since the institution of the office of justice of the peace, it may be tried by a court of quarter sessions, unless there is some special direction that it shall be determined by another court; and with the above exceptions, the quarter sessions have power to try all indictable offences, whether offences at the Common Law or created by statute. See 4 & 5 Vict. c. 56; 9 & 10 Vict. c. 25; and 20 & 21 Vict. c. 54, s. 16.

Many other matters have been rendered cognizable by quarter sessions as a court of appeal. The principal of them relate to friendly societies, appointing inspectors of weights and measures, district surveyors of highways, and licensing and conduct of publicans, the settlement and maintenance of the poor, the accounts of overseers and surveyors of the highway, bastardy, vagrancy, etc. Convictions and orders of magistrates are also made the subject of appeal to the quarter sessions, and several statutes, e.g., the Highway Act and Local Acts relating to canals, etc., have empowered sheriffs to summon juries to be empannelled at the quarter sessions for trial of various questions respecting stopping or diverting roads, compensation for damages by widening roads, taking water from mills, etc. The sessions have power to try minor offences against the game laws.—*Pritch. Quar. Sess.* They have also jurisdiction under the Debtors Act, 1869, s. 20.

As to the *administrative* business of Quarter Sessions, transferred to the County Councils by the Local Government Act, 1888, see COUNTY COUNCIL.

Set-off, any counter-balance or counter-claim.

The subject of a set-off under the former practice was a cross debt or claim, on which a separate action might be sustained, due to the party defendant from the party plaintiff. It was a defence created by 2 Geo. II. c. 22, and had no existence at Common Law, and could only be pleaded in respect of mutual debts of a definite character, and did not apply to a claim founded in damages, or in the nature of a penalty, and the debt must have been due in the same right and between the same parties, and not a mere equitable demand. The defendant could not avail himself of a set-off, unless it were specially pleaded, and particulars thereof delivered with the plea.

It is now provided by R. S. C., 1883, Ord. XIX., r. 3 (re-enacting Ord. XIX., r. 3 of the Judicature Act, 1875), that a defendant in an action may set-off or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not.

Sets of Exchange, or of Bills. It has been common, from a very early period, for the drawer to draw and deliver to the payee several parts, commonly called a set, of the same bill of exchange, any one part of which being paid, the others are void. This is done to obviate inconveniences from the mislaying or miscarriage of the bill, and to enable the holder to transmit the same by different conveyances to the drawee, so as to ensure the most speedy presentment for acceptance and payment. The general usage in England and America is for the drawer to deliver a set of three parts of the bill to the payee or holder. —*Byles on Bills.*

By the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 51, s. 71, 'where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other part, the whole of the parts constitute one bill.'

Settled land, land limited by way of *succession*, to a person other than the person for the time being entitled to the beneficial enjoyment thereof. Prior to 1856 settled estates could not be sold or leased except under the authority of the settlement which created them or of a private Act of Parliament. In 1856, the Settled Estates Act, 19 & 20 Vict. c. 120 (amended and extended by 21 & 22 Vict. c. 77; 27 & 28 Vict. c. 45; and 37 & 38 Vict. c. 33), gave large power to the Court of Chancery with the concurrence of the parties interested to direct sales and leases of settled estates, and also enabled tenants for life, without application to any Court, to make certain leases binding on the parties in remainder. The Settled Estates Act, 1877, 40 & 41 Vict. c. 18, consolidated these Acts, with some amendments.

The Settled Land Act, 1882, 45 & 46 Vict. c. 38, which came into operation on the 1st January, 1883, and which is retrospective as well as prospective and compulsory, though not repealing the Act of 1877, so materially extends the principles of that Act as to render its provisions comparatively useless. The main objects of the Act of 1882 are to liberate tenants for life from the control of their trustees, and to enable them to 'improve' settled land out of the proceeds of the sale of part of it, or to permanently convert the whole or part of the settled land into certain forms of personal property. Before considering the Act in detail, particular attention should be directed to s. 53, which enacts that—

'A tenant for life shall, in exercising any

power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and have the duties and liabilities of a trustee for those parties.'

The Act, which extends to Scotland but not to Ireland, contains 17 'parts' and 65 sections. It may be sufficiently considered here under five heads :—

I. *Sales.* A tenant for life may sell the settled land or any part of it at the best price that can reasonably be obtained (ss. 3, 4), but he may not sell the principal mansion house without the consent of the trustees or an order of the Chancery Division of the High Court (s. 15). His contracts for sale (which he may vary or rescind as if he were absolute owner) are binding on and enure for the benefit of the settled land, and enforceable against and by every successor in title for the time being (s. 31).

II. *Leases.* A tenant for life may lease the settled land or any part of it for any term not exceeding ninety-nine years for building, sixty years for mining, or twenty-one years for any other purpose (s. 6). He may also contract for any lease, and his contracts for leases are binding in like manner as his contracts for sales are (s. 31, *supra*). He may also accept, with or without consideration, a surrender of any lease of settled land, whether made under the Settled Land Act, or not (s. 13).

III. *Investments.* The proceeds of a sale of settled land must be invested or applied in one of eleven specified modes, of which the following are the most material :—

Investment in government securities, or in other securities authorised by the settlement or by law, or in the debenture stock, etc., of any incorporated railway company having for ten years next before the investment paid a dividend on its ordinary stock.

In discharge of incumbrances, or redemption of land tax or tithe rent charge.

In payment for any improvement authorised by the Act.

In purchase of land in fee simple, or of leasehold land held for sixty years or more unexpired at the time of purchase.

In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of the Act (s. 21).

IV. *Improvements.* The improvement of Land Act, 1864 (see title IMPROVEMENT), authorises the *borrowing* of money by a tenant for life on the security of settled land for the purposes of executing, for the benefit of the settled land, the improvements therein mentioned. The Settled Land Act effects the same object by the more direct and cheaper mode of authorising a *sale* of the settled land, and an expenditure of the purchase money on the improvements authorised. As many as twenty such improvements are enumerated in the 25th section of the Act, being a repetition of those authorised by the Improvement of Land Act, 1864, with important additions, and their number is further added to by s. 13 of the Settled Land Act, 1890.

The principal improvements authorised by the Act of 1882 are :—

Drainage; Irrigation; Distribution of sewage as manure; Roads; Planting; 'Cottages for labourers employed on the settled land or not'; Farm-buildings; Reservoirs; Tramways; Railways; Canals and Docks; Market-places; and Trial pits for mines.

The approval of the Court or of the trustees is required before capital money may be expended on any of these improvements, and if the money be in the hands of the trustees, they may not apply it thereto without a preliminary certificate from the 'Land Commissioners,' or a competent engineer or surveyor, or an order of the Court (s. 26). There is an obligation upon the tenant for life and his successors to maintain and repair improvements 'during such period, if any, as the land commissioners by certificate in any case prescribe.' (s. 28).

The Act was amended by the Settled Land Act of 1884, 47 & 48 Vict. c. 18; of 1887, 50 & 51 Vict. c. 30; of 1889, 52 & 53 Vict. c. 36; and of 1890, 53 & 54 Vict. c. 69; the last amending Act being the most important, giving the remainder-man power to complete his predecessor's contract, empowering the tenant for life to grant leases without deed for three years or less, and to grant mining leases at a sliding scale rent; also to raise money by mortgage of the settled land for the purpose of discharging incumbrances upon it.

Settlement, the act of giving possession by legal sanction; a jointure granted to a wife; a family arrangement of property (see PROTECTOR OF THE SETTLEMENT).

The fixture of a person on becoming a pauper in a particular parish, to which is attached a right to be maintained by that parish and a liability to be removed thereto. In the early part of the nineteenth century, the law of settlement, in consequence of the increased facilities for locomotion, led to very frequent litigation between parishes, which has gradually diminished by the introduction of the 'status of irremovability,' upon ac-

quiring which a pauper is no longer liable to be removed. This status is now acquired under the Union Chargeability Act, 1865, 28 & 29 Vict. c. 79, s. 8, by *one* year's residence, —formerly three by 24 & 25 Vict. c. 55, and originally five by 9 & 10 Vict. c. 66. See POOR LAWS; and *Burn's Justice*, tit. '*Poor*.'

Settlement, Act of, the name of the 12 & 13 Wm. III. c. 2, by which the Crown is limited to Her Majesty's house, being Protestants, and various provisions made for securing our religion, laws, and liberties, which are declared to be the birthright of the people, according to the ancient doctrine of the Common Law.—*Steph. Com.*, 7th ed., i. 252 n.; ii. 470; iv. 295, 610.

Settling day. The day on which transactions for the 'account' are made up on the Stock Exchange. In consols they are monthly; in other investments, twice in the month.

Sever (*v.n.*). Defendants are said to sever in their defences when they plead independently.

Several counts. Where a plaintiff had several distinct causes of action he was allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribed. Different causes of action, of whatever kind, might be joined, except in actions of replevin and ejectments, by C. P. L. Act, 1852, s. 41. For the former practice, see 1 *Chit. Arch. Prac.*, 12th ed., 234. See now JOINDER OF CAUSES OF ACTION.

Several covenant, a covenant by two or more separately.

Several fishery, is where a person has an exclusive right to fish, either on his own soil or the soil of another. It is a question, however, whether a person can have a several fishery without being owner of the soil. From the case of *Seymour* v. *Lord Courtenay*, 5 *Burr*, 2816, we learn that a right of several fishery does not necessarily imply an *exclusive* right, but may exist where no other person has a *co-extensive* right in the subject claimed. See FISHERY.

Several inheritance, an inheritance conveyed so as to descend to two persons severally, by moieties, etc.

Several matters, Pleading. See SEVERAL PLEAS.

Several pleas. A defendant might have given several distinct answers to the same claim or complaint of the plaintiff, in some instances without and in other instances with the leave of a judge. As to the former practice, see 1 *Chit. Arch. Prac.*, 12th ed., 278—286. See now PLEADING, and STATEMENT OF DEFENCE.

Several tail, where land is entailed on two separately.

Several tenancy [*tenura separalis*, Lat,], a tenancy which is separate, and not held jointly with another person.

Severalty, Estates in. He who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein.—2 *Bl. Com.* 179.

Severance, separating or severing. See SEVER.

Sewage. See SEWER.

Seward, or **Seaward,** one who guards the sea-coast; *custos maris*.

Sewer, a trench or channel through which water flows.

The Court of Commissioners of Sewers is a temporary tribunal, erected by commission under the Great Seal, which used to be granted *pro re natâ* at the pleasure of the Crown, but now at the discretion of the Lord Chancellor, Lord Treasurer, and Chief Justices, pursuant to the Statute of Sewers, 23 Hen. VIII. c. 5. Their jurisdiction is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers; or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith, and is confined to such county or particular district as the commission shall name. They are a court of record, and may proceed by jury, or upon their own view, and may make orders for the removal of annoyances, or the conservation of the sewers within their commission, according to the customs of Romney Marsh, or otherwise. They may also assess necessary rates upon the owners of land, and, on refusal, may levy by distress of goods and chattels, or by 23 Hen. VIII. c. 5, may sell freehold, and by 7 Anne c. 10, copyhold lands to pay the assessments. By 4 & 5 Vict. c. 45, they may, for the purposes of defraying the expenses, tax in the gross in each parish such lands as are within the jurisdiction, so that they shall contribute in proportion to the benefit received as compared with other parishes; this is the General Sewers Tax, and is recoverable by distress and sale. See 12 & 13 Vict. c. 50, and 3 *Steph. Com.*

By the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), Her Majesty may, upon the recommendation of the Inclosure Commissioners, direct commissions of sewers into all parts of England, and give them jurisdiction over such areas as may be most expedient for the construction of new, and maintenance

and improvement of old works. The Act includes all commissions of sewers granted by the Crown for the time being in force, whether granted previously to the Act or not, but does not extend to the metropolis. It provides for the constitution of elective drainage districts, and for the appointment of boards therein, with the same powers as commissioners of sewers. See also title IMPROVEMENT OF LANDS, and 3 *Steph. Com.*

With regard to sewers within the districts of local authorities, the Public Health Act, 1848, and a number of succeeding Acts, made careful provisions. These Acts have now been superseded by the Public Health Act, 1875 (38 & 39 Vict. c. 55). That Act, with certain exceptions, vests all existing and future sewers within the district of a local authority, in such authority, and places them under its control, giving them also powers and duties for the making, purchasing, and maintaining such sewers, and for compelling the use of them by persons within the district (sections 13—26).

The same Act authorises any local authority for the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, to construct, purchase, or take on lease works, either within or without their district; and further authorises any such authority to agree with an adjoining authority for the communication of the sewers of their respective districts (ss. 27—34).

As to the Metropolitan Sewers, see 18 & 19 Vict. cc. 30, 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102; 26 & 27 Vict. c. 68; and 32 & 33 Vict. c. 102.

An officer of the household in mediæval times.

Sexagesima Sunday, the second Sunday before Lent, being about the sixtieth day before Easter.

Sexhindeni, or **Sexhindmen**, the middle thanes valued at 600*s*. See HINDENI HOMINES.

Sextery Lands, lands given to a church or religious house for maintenance of a sexton or sacristan.—*Cowel.*

Sexton (probably from *sacristan*), the keeper of things belonging to divine worship. He is ordinarily chosen by the Rector, but sometimes by the parishioners, according to custom. His particular duties are to cleanse the church, to open the pews, to fill up the graves, to provide candles and other necessaries, and to prevent disturbance in the church.—59 *Geo. III.* c. 134, ss. 6, 10; and 19 & 20 *Vict.* c. 104, s. 9.

Shack, a liberty of winter pasturage in Norfolk. See *Cowel.*

Shack, Common of, the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in such field.

Sham plea, a vexatious or false defence, resorted to under the old system of pleading for purposes of delay and annoyance.—*Steph. on Pleading*, 7th ed., 383.

Shares in public undertakings. Where the property is vested by charter or Act of Parliament in a body corporate, the shares of the individual corporators in the concern itself are personal not real estate; for such shares are merely the rights which each individual possesses as a partner to a share in the surplus profit derived from the employment of the capital, which is a mixed fund, consisting in part of personal chattels, as well as lands and fixtures. See the Companies Act, 1862 and 1867. Shares in all companies which are within these Acts, and the earlier Companies Act of 1856, or the Companies Clauses Act, 1845, are personal property; and in many cases of companies incorporated by special Act, the shares have been expressly declared to be personal property. The rule seems to be that the question whether shares in undertakings are real or personal property turns upon the nature of the shares, that is, whether the holder can call for a specific part of the land itself or only a share of the profits.

Shares are limited in number, each share being indivisible. In many cases, however (see e.g., s. 61 of the Companies Act, 1845), they may be converted into stock representing the same amount of capital, but divisible at the pleasure of the holders, though some companies will not recognise the divisibility of a pound stock into fractions.

As to the fraudulent sale of shares, etc., see 30 Vict. c. 29. As to the forgery of transfers of shares, etc., see 24 & 25 Vict. c. 98, s. 2; and 33 & 34 Vict. c. 58; and as to the personation of owners of shares, etc., see the same Acts.

The expression 'shares' in a will passes stock.—*Morrice* v. *Alymer*, L. R. 7 H. L. 717.

Sharping corn, a customary gift of corn which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, etc.—*Blount.*

Shaster, the instrument of government or instruction; any book of instructions, particularly containing Divine ordinances.—*Indian.*

Shaw, a grove or wood, an underwood.

Shawatores, soldiers.—*Cowel.*

Sheading, a riding, tithing, or division in the Isle of Man, where the whole island is

divided into six sheadings, in each of which there is a coroner or chief constable appointed by a delivery of a rod at the Tinewald Court or annual convention.—*King's Isle of Man*, 7.

Sheep, injury to, by dogs, action for, under 28 & 29 Vict. c. 60. See DOGS; and as to Scotland, see 26 & 27 Vict. c. 100.

Sheep-heaves. 'Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such.'—*Cooke, Inclos. Acts*, 44.

Sheep-silver, a service turned into money, which was paid in respect that anciently the tenants used to wash the lord's sheep.

Sheep-skin, a deed; from the parchment it was written on.

Sheep-stealing, *or killing sheep with intent to steal*, a felony.—24 & 25 *Vict.* c. 96, ss. 10, 11.

Shelley's case, Rule in. Intimately connected with the quantity of estate which a tenant may hold in realty, is the antique feudal doctrine generally known as the rule in *Shelley's* case which is reported by Lord Coke in 1 Rep. 93 b. (23 Eliz. in C. B.) This rule was not first laid down or established in that case, but then was simply admitted in argument of a well-founded and settled rule of law, and has always since been quoted as the rule in *Shelley's* case.

A thorough knowledge of the application of this rule is of great practical importance. See the elaborate exposition of the rule by Mr. Fearne, who debates it as the first exception to his fourth class of contingent remainders in his valuable essays on the learning regarding that subject, c. 1, § 5, pp. 27—208; and also Mr. Preston's *Elementary Treatise on Estates* (vol. 1, c. 3, pp. 263—419, 2nd ed.), in which 'the end proposed is, by negative and affirmative propositions, to exhibit in a discussion of that rule, the instances in which several limitations, one to the ancestor, the other to the heirs, heirs of the body, or issue of the body of that person, do and do not give the inheritance to the ancestor.'

The rule may be described thus: Where a life freehold, either legal or equitable in realty (whether of freehold or copyhold tenure), is limited by any assurance to a person, and by the same assurance the inheritance of the same quality, i.e., either legal or equitable, is limited by way of remainder (with or without the interposition of any other estate) to his heirs or the heirs of his body, such remainder is immediately executed in possession in the person so taking the life freehold, the word 'heirs' being treated as a word of limitation and not of purchase, so that the life-tenant takes the inheritance, which is neither contingent nor in abeyance; that is to say, where the inheritance is to his heirs or right heirs he takes the fee simple; and where it is to the heirs of his body an estate-tail general.—1 *Steph. Com.*

In Coke's Reports in verse the rule has been rhymed thus:—

> 'Where ancestors a freehold take,
> The words "his heirs," a limitation make;'

which may serve to refresh the memory.

As examples of the application of the rule, take the following:—Land is limited to A. for life, remainder to his right heirs, the rule does not treat this remainder as contingent, but confers it upon A. at once, whereupon his life-estate merges in the remainder, and he takes the entire interest, i.e., the fee-simple. Again: Land is limited to A. for life, remainder to B. for life, remainder to the heirs male of A.'s body, the second remainder vests in A. as a remainder in tail male general, and is not in contingency or abeyance, nevertheless waiting for, and continuing expectant on, the determination of B.'s life-estate, which is expectant on A.'s death; but after A.'s death, and the determination of the mesne remainder to B., A.'s heir in tail male general shall enjoy the land as heir, and not as purchaser.

This rule is of positive institution at variance with rules of construction; for while the latter seek for the intention of parties, and strive for its accomplishment, the former combats the intention—a conflict which frequently raises immense difficulties as to whether the rule or intention should prevail. In the operation of the rule on the limitations of the two above-stated examples, it certainly contradicts the meaning of the assurance, and the intent of the parties. Two estates are created, a particular estate in the ancestor, and a remainder in his heirs. In the absence of the rule, the heir would have taken an original and independent estate by purchase, not derived from or controllable by his ancestor; but the operation of the rule places the whole power over the inheritance in the ancestor, who can partially or totally defeat the expectation of his relation.

Shepway, Court of, a court held before the Lord Warden of the Cinque Ports. A writ of error lay from the Mayor and jurats of each port to the Lord Warden in this court, and thence to the Queen's Bench. The civil jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

Shereffe, the body of the lordship of Cærdiff in South Wales, excluding the members of it.—*Powel's Hist. Wal.* 123.

Sheriff, Shire-reeve, or Shiriff [fr. *scire*, Sax., fr. *scyran*, to divide, and *gerefa*, a guardian (*vicecomes*)], the chief officer of the Crown in every county or shire, who does all the sovereign's business in the county, the Crown by letters-patent committing the custody of the county to him alone.

The judges, together with the other great officers and privy councillors, meet in the Exchequer on the morrow (November 12th) of St. Martin, yearly; and then and there the judges propose three persons from each county, to be reported, if approved of, to the Queen, who afterwards appoints one of them to be sheriff, and such appointment generally takes place about the end of the following Hilary Term. If a sheriff die in office, the appointment of another is the mere act of the Crown.

The Consolidating Sheriffs Act, 1887, 50 & 51 Vict. c. 55, repeals, and so far as they were not obsolete, re-enacts the very numerous enactments as to sheriffs from 3 Edw. I. c. 9 to s. 16 of the Judicature Act, 1881, inclusive. By s. 3 of this Act a sheriff is annually appointed, having (s. 4) sufficient land within the county 'to answer the Queen and her people'; by s. 23 every sheriff must, within one month after his appointment is gazetted, nominate some fit person to be his under-sheriff; and by s. 24 every sheriff is to appoint a sufficient deputy, having an office within a mile of the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ addressed to the sheriff.—Consult *Atkinson* or *Churchill and Bruce on Sheriff*; and see *Chitty's Statutes*, vol. v., tit. '*Sheriff*,' for the old repealed Acts, and its '*Continuation for* 1887' for the Consolidating Act of 1887.

Sheriff (**in Scotland**), the chief judge of a county, also called sheriff-depute (the principal sheriffship being a nominal office) and sheriff principal. His civil jurisdiction extends to all personal actions on contract, bond, or obligation, to the greatest extent; also, by 40 & 41 Vict. c. 50, s. 8, to actions relating to a heritable right where the value of the subject matter does not exceed 50*l.* by the year or 1000*l.* value, and to all possessory actions, as removings, spuilzies, etc., to all brieves issuing from Chancery in Scotland, as of inquest, terce, division, tutory, etc., and generally to all civil matters not specially committed to other courts. He has also a summary jurisdiction in regard to small debts, as well as a criminal jurisdiction. See *Bell's Scotch Law Dict.*, and 1 & 2 Vict. c. 119; 16 & 17 Vict. cc. 80, 92; 17 & 18 Vict. c. 72; 27 & 28 Vict. c. 106; 40 & 41 Vict. c. 50.

Sheriff Clerk, the clerk of the Sheriff's Court in Scotland.

Sheriff Court Houses in Scotland. See 23 & 24 Vict. c. 79, amended by 29 & 30 Vict. c. 53.

Sheriffalty, Sheriffdom, Sheriffship, Sheriffwick, or **Shrievalty** [*vicecomitatus*, Lat.], the office or jurisdiction of a sheriff.

Sheriff-geld, a rent formerly paid by a sheriff, and it is prayed that the sheriff in his account may be discharged thereof.—*Rot. Parl.* 50 *Edw. III.*

Sheriff-Substitute (**in Scotland**), the resident judge ordinary of the county, discharging the duties of the sheriff principal, by whom his judgment is in most cases subject to review.—*Bell's Law Dict.*

Sheriff-tooth, a tenure by the service of providing entertainment for the sheriff at his county courts; a common tax, formerly levied for the sheriff's diet.

Sheriff's Court in London. See City of London Court.

Sheriff's officers, bailiffs, who are either bailiffs of hundreds or bound-bailiffs.

Sheriff's tourn or **rotation**, a court of record held twice every year, within a month after Easter and Michaelmas, before the sheriff, in different parts of the county, being indeed only the *turn* of the sheriff to keep a court-leet in each respective hundred; this, therefore, was the great court-leet of the county, as the county court was the court-baron; but the 'tourn,' which had been long obsolete, was expressly abolished by s. 18, subs. 4, of the Sheriffs Act, 1887.

Sherrerie, a word used by the authorities of the Roman Church, to specify contemptuously the technical parts of the law, as administered by non-clerical lawyers.—*Bacon.*

Shew cause, to appear (in obedience to a rule of court calling upon the party to appear and shew cause) and argue that the rule should not be made absolute. Rules to shew cause are now, in many cases, abolished by the Supreme Court of Judicature Act. See Rules.

Shewing [*monstratio*, Lat.], to be quit of attachment in a court, in plaints shewed and not avowed. Obsolete.

Shifting use, a secondary or executory use, which, when executed, operates in derogation of a preceding estate: as land conveyed to the use of A. and his heirs, with proviso that when B. pays a certain sum of money, the estate shall go to the use of C. and his heirs.

Shilling [fr. *solidus*, Lat.; *scilling*, Sax.], among the English Saxons passed for 5*d.*;

afterwards it represented 16*d.*, and often 20*d.* In the reign of the Conqueror it was of the same denominative value as at this day.—*Domesday.*

Shilwit. See CHILDWIT.

Ship-money, and imposition formerly levied on port-towns and other places for fitting out ships; revived by Charles I., and abolished in the same reign.—17 *Car. I.* c. 14.

Shipper, the owner of goods who entrusts them on board a vessel for delivery abroad, by charter party or otherwise.

Ships. See NAVIGATION ACTS, and MERCHANT SHIPPING, and consult *Maude and Pollock on Shipping; Chitty's Statutes,* vol. 6, tit. '*Shipping.*'

Ship's-husband, a peculiar agent appointed by the owner of a ship to look after the repairs, equipment, management, and other concerns of the ship. His duties are: (1) To see to the proper outfit of the vessel in the repairs adequate to the voyage, and in the tackle and furniture necessary for a seaworthy ship. (2) To have a proper master, mate, and crew for the ship, so that in this respect it shall be seaworthy. (3) To see to the due furnishing of provisions and stores, according to the necessities of the voyage. (4) To see to the regularity of clearance from the custom-house of the registry. (5) To settle contracts, and provide for payment of the furnishings requisite. (6) To enter into charter-parties, or engage the vessel for general freight, under usual conditions; and to settle for freights and adjust averages with the merchant. (6) To preserve the proper certificates, surveys, and documents, in case of disputes with insurers or freighters, and to keep regular books of the ship.—*Story's Agency,* 31. See *Maclachlan on Shipping.*

Ship's papers, documents required for the manifestation of the property of the ship and cargo, etc. See a list of them in Form H. 17 of the Rules of the Supreme Court.

They are of two sorts: (1) those required by the law of a particular country, as the certificate of registry, license, charter-party, bills of lading and of health, required by the law of England to be on board all British ships; (2) those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea-brief, or sea-letter, proofs of property, the muster-roll, or *rôle d'équipage*; the charter-party, the bills of lading and invoices, the log-book or ship's journal, and the bill of health.—1 *Marshall on Insur.* c. 9, s. 6.

Shire [fr. *scyran,* Sax., to divide], a part or portion of the kingdom; called also a county [*comitatus,* Lat.]. King Alfred first divided this country into *satrapiæ,* now called shires; shires into *centuriæ,* now called hundreds; and these again into *decennæ,* now called tithings.—*Leg. Alfred.* See *Brompton,* 956.

Shire-clerk, he that keeps the county-court.

Shire-man, or **Seyre-man,** anciently judge of the county, by whom trials for land, etc., were determined before the Conquest.

Shiremote, an assembly of the county or the shire at the assizes, etc.

Shire-reeve, a sheriff, which see.

Shoofaa, pre-emption, or a power of possessing property which has been sold, by paying a sum equal to that paid by the purchaser.—*Macn. Mahometan Law.*

Shooting or wounding, or causing any grievous bodily harm, with intention to maim, disfigure, or disable, or to do some other grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detaining of any person, is a felony. See 24 & 25 Vict. c. 100, s. 18.

Shop, a place where things are kept for sale, usually in small quantities, to the actual consumers. By the Shop Hours Regulation Act, 1886, 49 & 50 Vict. c. 55,—a temporary Act, continued by the Expiring Laws Continuance Act, 1891, until the 31st December, 1892,—persons under the age of 18 may not be employed in a 'Shop' (which expression is defined as meaning 'retail and wholesale shops, market-stalls and warehouses in which assistants are employed for hire,' and as including 'licensed public-houses and refreshment houses of any kind') more than 74 hours, including meal times, in any week.

Short cause, a suit in the Chancery Division of the High Court of Justice, where there is only a simple point for discussion. See *Dan. Ch. Pr.,* 5th ed., 836.

Short entry. It takes place when a bill or note, not due, has been sent to a bank for collection, and an entry of it is made in the customer's bank-book, stating the amount in an inner column, and carrying it into the accounts between the parties when it has been paid. See ENTERING SHORT.

Short-ford, *q. d. foreclose.* The ancient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him, and no distress can be levied, he is to come to the tenement and there take a stone, or some other dead thing, and bring it before the mayor and bailiffs; this he must do seven quarter days successively; and if on the seventh the lord is not satisfied, then the tenant shall be adjudged to the lord to hold the same a year and a day;

and forthwith proclamation is to be made, in the court, that if any man claim any title to the tenement he must appear within a year and a day, and satisfy the lord. If no appearance be made, and the rent not paid, the lord comes again to the court and prays that the tenement be adjudged to him in his demesne as of fee, which is done, and the lord has it to him and his heirs. This custom is called *short-ford.—Izaeli's Antiq. Exet.* 48. See *Cowel.*

A like custom in London by the ancient statute of Gavelet, attributed to 10 Edw. II., is called *forschot* or *forschoke.*

Short notice of trial; four days unless otherwise ordered. See R. S. C. 1883, Ord. XXXVI., r. 14.

Shrievalty, the office of sheriff; the period of that office.

Shrieve, a corruption of sheriff.

Shroff, Shrof, a banker or money-changer. —*Indian.*

Shroud-stealing. If any one, in taking up a dead body, steal the shroud or other apparel, it will be felony; for the property therein remains in the executor, or whoever was at the charge of the funeral.—*Inst.* 110; 1 *Hale P. C.* 535.

Si actio, the conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, etc. Obsolete.

Si à jure discedas vagus eris, et erunt omnia omnibus incerta. Co. Litt. 227.—(If you depart from the law you will wander, and all things will be uncertain to everybody.)

Sib, akin.

Sica, Sicha, a ditch.—*Mon. Angl.*, ii. 130.

Sich, a little current of water, which is dry in summer; a water furrow or gutter. —*Cowel.*

Sicius, a sort of money current among the ancient English of the value of 2*d.*

Sicut alias, as at another time, or heretofore. This was a second writ sent out when the first was not executed. See *Cowel.*

Sic utere tuo ut alienum non lædas. 9 Co. 59.—(Use your own rights so that you do not hurt those of another.)

Sicut natura nil facit per saltum, ita nec lex. Co. Litt. 238.—(In the same way as nature does nothing by a bound, so neither does the law.)

Side-bar rules. See RULES.

Sideings, meres between or on the sides of ridges of arable lands.—*Cowel.*

Sides-men, Synods-men, or **Quest-men**, persons who were formerly appointed in large parishes to assist the churchwardens in inquiring into the manners of inordinate livers, and in presenting offenders at visitations.—*Cowel.* In some large parishes this office still exists as the office of assistant to the churchwardens.

Siens, scions or descendants.

Si fecerit te securum, a species of original writ, so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.

Sight, Bills payable at, are by s. 10 of the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, replacing the repealed 34 & 35 Vict. c. 74,—prior to which three days' grace was allowed,—made equivalent to bills payable on demand.

Sigil [fr. *sigillum*, Lat.], seal, signature.

Sigla [fr. *segel*, Sax.], a sail.—*Leg. Etheld.* c. 24.

Signature, a sign or mark impressed upon anything; a stamp, a mark; the name of a person written and subscribed by himself. Pleadings must be signed by counsel if settled by him, and if not, by the solicitor for the party. R. S. C., 1883, Ord. XIX., r. 4. No fee to counsel is allowed on taxation unless vouched by his signature.—*Ib.*, Ord. LXV., r. 27, reg. 52.

Signet, a seal commonly used for the sign-manual of the sovereign. See ROYAL SIGNET.

In Scotland it is the seal by which the queen's letters or writs, for the purpose of private justice, are now authenticated.

Clerks to the signet, or writers to the signet in Scotland, are a body, the members of which perform much the same functions as attorneys in England.

Significavit, a writ issuing out of the Chancery upon certificate given by the ordinary of a man's standing excommunicate by the space of forty days, for the keeping him in prison till he submit himself to the authority of the church. See 53 Geo. III. c. 127, and *Ex parte Dale*, 6 *Q. B. D.*, at p. 381, in which case Lord Penzance in 1880 issued a significavit against the Rev. Mr. Dale for disobedience to his inhibition.

Also, another writ, addressed to the justices of the bench, commanding them to stay any suit depending between such and such parties by reason of an excommunication alleged against the plaintiff, etc.—*Reg. Orig.* 7.

Sign-manual, the royal signature. Sometimes required by statute as evidence of the authority of the Sovereign, e.g., by the Jud. Act, 1873, s. 31, in reference to the transfer of a judge of the High Court from one division thereof to another. Towards the end of the reign of King George the Fourth, the

royal signature was, by 11 Geo. IV. and 1 Wm. IV. c. 23, authorised to be affixed by commission.

2. The signature of any one's name in his own handwriting.

Signum, a cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons.

Silentiarius, one of the Privy Council: also an usher, who sees good rule and silence kept in court.

Silent leges inter arma. 4 Inst. 70.—(Laws are silent amidst arms.)

Silva cædua, wood under twenty years' growth.

Similiter [Lat.] (*in like manner*). Formerly when an issue of fact was tendered, the words were as follows: 'and of this the defendant puts himself upon the country'; or thus, 'and this the plaintiff prays may be inquired of by the country'; the issue and form of trial were then both accepted on the other side (unless there appeared grounds for demurrer), by the words following: 'and the plaintiff (or the defendant as the case may be) doth the like,' which latter words were called the *Similiter*. After the passing of the C. L. P. Act, 1852, the joinder of issue under s. 79 of that Act superseded the *Similiter*. See now ISSUE.

The want of a similiter by the prosecutor in criminal cases is cured by 7 & 8 Geo. IV. c. 64, s. 20.

Similitudo legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similium valet, valebit in altero. Dissimilium dissimilis est ratio. Co. Lit. 191.—(Legal similarity is a similar reason which governs various cases, when compared with each other, for what avails in one of similar cases will avail in the other. Of things dissimilar, the reason is dissimilar.)

Simony, the corrupt presentation of, or the corrupt agreement to present any one to an ecclesiastical benefice for reward. It is derived from Simon Magus, who offered money to the Apostles for the power to work miracles (Acts viii. 18—24). It is an offence by statute 31 Eliz. c. 6, which by s. 5, 'for the avoiding of simony,' directs that the corrupt presentation shall be void, and the presentation shall go to the Crown.

Many questions have arisen with regard to what is and what is not simony; and among others these points seem to be clearly settled:—

(1) That the sale of an advowson (whether the living be full or not) is not simoniacal, unless connected with a corrupt contract or design as to the next presentation, though if an advowson be granted during the vacancy of the benefice, the presentation on that vacancy can in no case pass by the grant. (2) That to purchase a next presentation, the living being actually vacant, is open and notorious simony, this being expressly in contravention of the statute. (3) That for a clerk to bargain for a next presentation, the incumbent being sick and about to die, was simony even before the statute of Anne, and now by that statute to purchase, either in his own name or another's, the next presentation, and be thereupon presented at any future time to the living, is direct and palpable simony. (4) But a bargain by any other person for the next presentation (even if the incumbent be *in extremis*), if without the privity and without any view to the nomination of the particular clerk afterwards presented, is not simony. (*Fox* v. *Bishop of Chester*, 6 *Bing.* 1.) (5) That if a simoniacal contract be made with the patron, the clerk presented not being privy thereto, the presentation for that turn shall indeed devolve to the Crown, as a punishment of the guilty patron, but the clerk who is innocent does not otherwise incur any disability or forfeiture. (6) That bonds given to pay money to charitable uses, on receiving a presentation to a living, are not simoniacal, provided the patron or his relations be not benefited thereby, for this is no corrupt consideration moving to the patron.

That clergymen of good character and repute have been parties to contracts which the law considers simoniacal is, however, undoubted. (*Report of Royal Commission on Church Patronage*, 1879.) See also RESIGNATION BOND.

Simple contract, a parol promise, which may be either verbal or written, but not under seal.

Simple contract debt, one where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise.—2 *Bl. Com.* 466.

Before 1870 simple contracts were, in the administration of the estate of a deceased person, postponed to debts secured by instrument under seal, called 'specialty debts,' but in 1869 all such priority was abolished by 32 & 33 Vict. c. 46, s. 1.

Simple deposit, a deposit made, according to the civil law, by one or more persons having a common interest.

Simple larceny, theft, without circumstances of aggravation. See LARCENY. If a man commit a simple larceny in one

county, and carry the goods with him into another, he may be indicted in either; for the law considers this as taking in both.

Simple trust: where property is vested in one person upon trust for another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que trust* directs.—*Lew. on Trusts.*

Simple warrandice, an obligation to warrant or secure from all subsequent and future deeds of the grantor.—*Scotch phrase.*

Simplex beneficium, a minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice, as distinguished from a cure of souls. It may therefore be held with any parochial cure, without coming under the prohibitions against pluralities.

Simplex commendatio non obligat. A man does not compromise himself by praising what he wishes to sell in *vague* or *abstract* terms.

Simplex justiciarius, a style formerly used for any *puisné* judge who was not chief in any court.—*Cowel.*

Simplex obligatio, a single unconditional bond.

Simplicitas est legibus amica: et nimia subtilitas in jure reprobatur. 4 Co. 8.—(Simplicity is favourable to the laws: and too much subtilty in law is to be reprobated.)

Simpliciter [Lat.], without involving anything not actually named.

Simulatio latens, a species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists.—*Beck's Med. Jurisp.* 3.

Simul cum [Lat.] (*together with*).

Sinderesis, a natural power of the soul, set in the highest part thereof, moving and stirring it to good, and abhorring evil. And therefore *sinderesis* never sinneth nor erreth. And this *sinderesis* our Lord put in man, to the intent that the order of things should be observed. And therefore *sinderesis* is called by some men the law of reason, for it ministereth the principles of the law of reason, the which be in every man by nature, in that he is a reasonable creature.—*Doctor and Student*, 39.

Sine assensu capitali, an abolished writ where a bishop, dean, prebendary, or master of an hospital, aliened the lands holden in right of his bishopric, deanery, house, etc., without the assent of the chapter or fraternity, in which case his successor should have this writ.—*F. N. B.* 195.

Sinecure [fr. *sine*, Lat., without, and *cura*, care], an office which has revenue without any employment.

Sinecure rector, a rector without cure of souls. Sinecure rectories are now abolished by 3 & 4 Vict. c. 113, s. 48, and 4 & 5 Vict. c. 39, s. 17. See 2 *Steph. Com.*

Sine die [Lat.] (*without day*, or *indefinitely*). Without a day being fixed. The consideration of a matter is said to be adjourned *sine die*, when it is adjourned without a day being fixed for its resumption.

Sine prole (often abridged *s. p.*), without issue.

Single bond [*simplex obligatio*, Lat.], a deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named.

Single combat, Trial by. See BATTEL.

Single entry, an entry made to charge or to credit an individual or thing, as distinguished from double entry, which is an entry of both the debit and credit accounts of a transaction. See DOUBLE ENTRY.

Single escheat, when all a person's movables fall to the Crown, as a casualty, because of his being declared rebel. See FORFEITURE.

Singular. By the 13 & 14 Vict. c. 21, s. 4, it is enacted that words in Acts of Parliament importing the singular shall include the plural, and the plural the singular, unless the contrary is expressly provided.

Singular successor. A purchaser is so termed in the Scotch Law, in contradistinction to the heir of a landed proprietor, who succeeds to the whole heritage by regular title, of succession or universal representation, whereas the purchaser acquires right solely by the single title acquired by the disposition of the former proprietor.—*Bell's Scotch Law Dict.*

Sinking Fund. A fund formed for the redemption of a debt by the periodical accumulation of fixed amounts by the borrower.

Si non omnes, Writ of, a writ on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business.—*F. N. B.* 186; *Reg. Orig.* 202. And after the writ of association, it is usual to make out a writ of *si non omnes*, addressed to the first justices, and also to those who are associated with them, which, reciting the purport of the two former commissions, commands the justices, that if all of them cannot conveniently be present, such a number of them may proceed, etc.—*F. N. B.* 111.

Sipessocua, a franchise, liberty, or hundred.

Si plures conditiones ascriptæ fuerunt donationi conjunctim, omnibus est parendum; et ad veritatem copulativè requiritur quod utraque pars sit vera: si divisim, cuilibet vel alteri eorum satis est obtemperare; et in disjunctivis sufficit alteram partem esse veram. Co. Litt. 225.—(If several conditions have been conjunctively annexed to a gift, the whole of them must be complied with; and with respect to their truth, if they be joint it is necessary that every part be true; if the conditions are separate, it is sufficient to comply with either one or other of them; and being disjunctive that one or the other be true.)

Si quidem in nomine, cognomine, prænomine legatarii testator erraverit, cum de personâ constat, nihilominus valet legatum. Justinian's Institutes, l. 2, t. 20, s. 29.—(Although a testator may have mistaken the *nomen*, *cognomen*, or *prænomen* of a legatee, yet if it be certain who is the person meant, the legacy is valid.)

Si quid universitati debetur singulis non debetur nec quod debet universitas singuli debent. D. 3, 4, 7; and see 1 Bl. Com., 21st ed., 484.—(If anything be owing to an entire body, it is not owing to the individual members; nor do the individuals owe that which is owing by the entire body.)

Si quis [Lat.] (*if any one*), an advertisement; a notification.

Si quis custos fraudem pupillo fecerit, à tutelâ removendus est. Jenk. Cent. 39.—(If a guardian do fraud to his ward, he shall be removed from his guardianship.)

Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse. Reg. Jur. Civ. —(If a man leave his wife pregnant, he shall not be considered to have died without children.)

Si quis unum percusserit, cum alium percutere vellet, in felonià tenetur. 3 Inst. 51.—(If a man kill one, meaning to kill another, he is held guilty of felony.)

Sircar, a government; a man of business. —*Indian.*

Si recognoscat, a writ that, according to the old books, lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court that he owed his creditor such a sum received of him.—*O. N. B.* 68.

Sise, corrupted from assize.

Sisters. Lord Coke says, *omnes sorores sunt quasi unus hæres*; all sisters are, as it were, one heir. See COPARCENERS.

Si suggestio non sit vera, literæ patentes vacuæ sunt. 10 Co. 113.—(If the suggestion be not true the letters-patent are void.)

Sithcundman, the high constable of a hundred.

Sittings. By the Judicature Act, 1873, s. 26, the division of the legal year into terms is abolished, and sittings are substituted for it.

The sittings of the Court of Appeal and High Court of Justice in Middlesex are four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings commence on the 24th of November and terminate on the 21st of December; the Hilary sittings commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday; and the Trinity sittings commence on the Tuesday after Whitsunweek and terminate on the 12th of August (R. S. C. 1883, Ord. LXII., as amended by the Long Vacation Order of 1884).

It is also provided by the Judicature Act, 1873, s. 30, that, subject to rules, etc., sittings for trial by jury shall be held in Middlesex and London, 'continuously throughout the year, by as many judges as the business to be disposed of may render necessary.' See further as to the judges who are to preside at different sittings, s. 37; and see also LONDON AND WESTMINSTER SITTINGS, and VACATION.

Sittings after Term. Sittings in banc after term were held by authority of the 1 & 2 Vict. c. 32. The Courts were at liberty to transact business at their sittings as in term time, but the custom was to dispose only of cases standing for argument or judgment.

Sittings in banc, sittings of the judges on the benches of their respective courts at Westminster, at which they decided matters of law and transacted other judicial business, as distinguished from *Nisi Prius* sittings, at which matters of fact were tried. See DIVISIONAL COURTS.

Sittings in Camerâ. See CAMERA.

Situs [Lat.], situation, location.

Six Acts, 60 Geo. III.; 1 Geo. IV. cc. 1, 2, 4, 6, 8, 9, passed to put down seditious meetings, etc.; c. 1, which prohibits illegal drilling, is still unrepealed.

Six Articles, Law of, made by 31 Hen. VIII. c. 14. This famous Act was styled 'An Act for abolishing Diversity of Opinions,' and it enforced conformity to six of the strongest points in the Romish religion (being the real presence, communion in one kind for the laity, celibacy of the clergy, sanctity of vows, private masses, and auricular confession) under the severest penalties, amended by 32 Hen. VIII. c. 10, and repealed by 1 Eliz. c. 1. —4 *Reeves*, 278.

Six Clerks in Chancery, officers who received and filed all proceedings, signed office copies, attended court to read the pleadings, etc. They were abolished by 5 & 6 Vict. c. 103.

Six Day License, a liquor license, and containing a condition that the premises in respect of which the license is granted shall be closed during the whole of Sunday,—granted under s. 49 of the Licensing Act, 1872, 35 & 36 Vict. c. 94.

Sixhindi, servants of the same nature as rodknights, *q.v.*—*Anc. Inst. Eng.*

Skeleton bill, one drawn, endorsed, or accepted in blank.

Skilled witnesses, witnesses who are allowed to give evidence on matters of opinion and abstract fact. Such evidence can only be given by persons of professional knowledge on the subject in hand; such as medicine, surgery, handwriting, mechanics, chemistry, foreign law, etc.; but not moral philosophy or political economy.

Skyvinage, or **Skevinage**, the precincts of Calais.—27 *Hen. IV.* c. 2.

Slander, the malicious defamation of a person in his reputation, profession, or business, by words; as a libel is by writing, etc. It is actionable in the following cases: (1) where the words impute a criminal offence; (2) where they impute misconduct in a public office; (3) where they are spoken in reference to a person's trade or profession; (4) where the speaking of them is productive of special damage. The slander of a woman by imputation on her chastity was first made actionable without special damage by the Slander of Women Act, 1891, 54 & 55 Vict. c. 51. Consult *Folkard* or *Odgers* on *Libel and Slander*.

Slaughter houses, regulated in the Metropolis by the Slaughter House (Metropolis) Act, 1874, 37 & 38 Vict. c. 67, and other statutes, and in large towns by the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 37, ss. 125—131, incorporated by the Public Health Act, 1875, 38 & 39 Vict. c. 56, s. 169.

Slavery, that civil relation in which one man has absolute power over the life, fortune, and liberty of another. It cannot subsist in England. See *Somerett's case* (11 *St. Tr.* 340).

The system of colonial slavery was abolished by 3 & 4 Wm. IV. c. 73. See 5 Geo. IV. c. 113; 7 Wm. IV. and 1 Vict. c. 91; 2 & 3 Vict. c. 73; 6 & 7 Vict. c. 98; 7 & 8 Vict. c. 26; 8 & 9 Vict. c. 122; 26 & 27 Vict. c. 34; and 32 & 33 Vict. c. 75. The various Acts for carrying into effect the treaties for the more effectual suppression of the slave trade were amended and consolidated by the 36 & 37 Vict. c. 88 (many previous Acts being thereby repealed). See, too, as to East Africa, 36 & 37 Vict. c. 59.

As to Roman slavery, see *Sand. Just.*, 7th ed., 14,

Sledge, a hurdle to draw traitors to execution.—1 *Hale P. C.* 82.

Slippa, a stirrup.

There is a tenure of land in Cambridgeshire by holding the sovereign's stirrup.

Slough silver, a rent paid to the castle of Wigmore, in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants.—*Cowel.*

Small Debts Courts, the several county courts established by 9 & 10 Vict. c. 95 for the purpose of bringing justice home to every man's door. See COUNTY COURTS.

Small Pox. See VACCINATION.

Small tithes [otherwise called *privy*], all personal and mixed tithes, and also hops, flax, saffrons, potatoes, and sometimes, by custom, wood.—2 *Steph. Com.*

Smoke, Consumption of, prescribed in the Metropolis by 16 & 17 Vict. c. 128, as amended by 19 & 20 Vict. c. 107 (repealed and replaced by the Public Health (London) Act, 1891.—See LONDON); in Scotland, by 20 & 21 Vict. c. 73; 24 & 25 Vict. c. 17; and 28 & 29 Vict. c. 102; for locomotives on railways by 8 Vict. c. 20, s. 114, as amended by 31 & 32 Vict. c. 119, s. 19; and in towns generally by Public Health Act, 1875, 38 & 39 Vict. c. 55, s. 91.

Smoke-farthings, pentecostals, which see.

Smokesilver, a modus of 6*d.* in lieu of tithe-wood.—*Cowel.*

Smuggling, the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption, without paying the duties chargeable upon them. It may be committed indifferently either upon the excise or customs revenue.

Smuggling is restrained by the statutes relating to the Customs, and in particular by 39 & 40 Vict. c. 36 (the Customs Consolidation Act, 1876).

Snottering silver, a small duty which was paid by servile tenants in Wylegh to the abbot of Colchester.—*Cowel.*

Soap. The excise on soap was repealed by 16 & 17 Vict. c. 39.

Soc, Sok, Seka, jurisdiction; a power or privilege to administer justice and execute laws; also a shire, circuit, or territory.—*Cowel.*

Soca, a seigniory or lordship, enfranchised by the king, with liberty of holding a court of his *soc-men* or *socagers*, i.e., his tenants.

Socage, or **Soccage**, a tenure by any certain or determinate service. Common socage is

the ordinary tenure in this country; the exceptions are, Borough-English, gavelkind, etc., *q.v.*

Socagium idem est quod servitum socæ; et soca, idem est quod caruca. Co. Litt. 86.—(Socage is the same as service of the soc; and soc is the same thing as a plough.)

Soccager, a tenant by a soccage.

Socer [Lat.], the father of one's wife; a father-in-law.

Socialism, absolute equality in the distribution of the physical means of life and enjoyment. It is on the continent employed in a larger sense; not necessarily implying communism, or the entire abolition of private property, but applied to any system which requires that the land and the instruments of production should be the property, not of individuals, but of communities, or associations, or of the government.—1 *Mill's Pol. Eco.* 248.

Socida, a contract or hiring, upon condition that the bailee take upon himself the risk of the loss of the thing hired.—*Civ. Law.*

Societas leonina, that kind of society or partnership by which the entire profits belong to some of the partners in exclusion of the rest. So called in allusion to the fable of the lion, who, having entered into partnership with other animals for the purpose of hunting, appropriated all the prey to himself. It was void.—*Civ. Law.* For the several *societates*, see *Sand Just.*, 7th ed., 372.

Société anonyme, an association where the liability of all the partners is limited. It had in England, until lately, no other name than that of 'chartered company,' meaning thereby a joint-stock company whose shareholders, by a charter from the Crown, or a special enactment of the legislature, stood exempted from any liability for the debts of the concern beyond the amount of their subscriptions.—2 *Mill's Pol. Eco.* 485. See LIMITED LIABILITY.

Société en commandite. See COMMANDITE.

Society. Associations of persons designated by the name of 'Society' are (1) Building Societies, regulated by the Building Societies Act, 1874, as to which see BUILDING SOCIETIES; (2) Friendly Societies, regulated by the Friendly Societies Act, 1875, as to which see FRIENDLY SOCIETIES; (3) Industrial and Provident Societies, regulated by the Industrial and Provident Societies Act, 1876, as to which see INDUSTRIAL AND PROVIDENT SOCIETIES; and (4) Loan Societies, regulated by 3 & 4 Vict. c. 110, as to which see LOAN SOCIETIES. See *Chitty's Statutes*, vol. vi., tit. '*Societies*.'

Socii mei socius, meus socius non est. D. 50, 17, 47.—(The partner of my partner is not my partner.)

Socman, a socager.

Socmanry, a free tenure by socage.

Socome, a custom of grinding corn at the lord's mill.—*Cowel.*

Bond-socome is where the tenants are bound to it.—*Blount.*

Socna, a privilege, liberty, or franchise.—*Cowel.*

Sodomy, the crime against nature, punishable until 1891 by a minimum term of ten years' penal servitude; but the effect of the Penal Servitude Act, 1891, s. 1, subs. 2 appears to be that imprisonment may be substituted, though this particular crime is not expressly mentioned in that Act.

Sodor and Man, Bishopric of, annexed to the province of York by Hen. VIII.—33 *Hen. VIII.* c. 31. See 1 & 2 Vict. c. 30, repealing partially 6 & 7 Wm. IV. c. 77. The bishop is not a lord spiritual.

Soit droit fait Al partie [Nor.-Fr.] (*let right be done to the party*).

Soke, a manor or lordship.—*Spelm.* And see per *Lord Chelmsford* in *Earl Beauchamp* v. *Winn*, *L. R.* 6 *H. L.* at p. 243.

Sokemanries, lands and tenements which were not held by knight service, nor by grand serjeanty, nor by petit, but by simple services; being, as it were, lands enfranchised by the king or his predecessors from their ancient demesne. Their tenants were *sokemans.*

Sokemans, tenants of socage-lands.—3 *Bl. Com.* 100.

Soke-reeve, the lord's rent-gatherer in the soca.—*Cowel.*

Sold Note. See BOUGHT AND SOLD NOTES.

Soldiers at parliamentary elections. See 10 & 11 Vict. c. 21, repealing 8 Geo. II. c. 30, and providing that, with certain exceptions, soldiers within two miles shall remain in barracks or quarters during elections.

Soldiers' Wills. See NUNCUPATIVE WILLS.

Sole, not married, single, alone; also separate, and apart.

Sole corporation, one person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the sovereign, bishop, parson, etc.—*Steph. Com.*, 7th ed., i. 358; iii. 4.

Sole tenant [*solus tenens*, Lat.], he that holds lands by his own right only, without any other person being joined with him.

Solicitation. It is an indictable offence to solicit and incite another to commit a felony, although no felony be in fact committed.—2 *East*, 5.

Solicitor, an officer of the Supreme Court of Judicature, who, and who only, is entitled to 'sue out any writ or process, or commence,

carry on, solicit, or defend any action or other proceeding' in any Court whatever (6 & 7 Vict. c. 73, s. 2). 'Solicitor of the Supreme Court' is the title given by the Judicature Act, 1873, s. 87, to all attorneys, solicitors, and proctors. Prior to that Act, 'attorneys' conducted business in the Common Law Courts, 'solicitors' business in the Court of Chancery, and 'proctors' ecclesiastical and admiralty business; but it was the general practice, although any person might be admitted to practise as an attorney *or* solicitor only, to be admitted to practise as an attorney *and* solicitor also.

Solicitors practise as advocates before magistrates at petty sessions and quarter sessions where there is no bar, in County Courts, at Arbitrations, at Judges' Chambers, Coroners' Inquests, Revising Barristers' Courts, Under Sheriffs' and Secondaries' Courts, and the Court of Bankruptcy. The annual certificate of a solicitor expires on the 15th November in every year, without any reference to the day on which it was issued. If taken out before the 16th December it will have relation back to the 15th November (23 & 24 Vict. c. 127, s. 22), and protect from penalties incurred before that time for having practised without a certificate; but if taken out on or after the 16th December, it will have relation only to the day on which it was issued; and if it be not issued before the end of the year, the solicitor's name will not appear in the 'Law List.' The duty payable is thus regulated: if the solicitor practise within ten miles of the General Post Office in London, then, for the first three years, the yearly duty is 4*l.* 10*s.*, and for every subsequent year 9*l.*; if he practise elsewhere, then, for the first three years, 3*l.*, and for every subsequent year 6*l*, Stamp Act, 1891, 54 & 55 Vict. c. 39. *Sched.* I, tit. '*Certificate.*' The Incorporated Law Society (see that title) is registrar of Solicitors, and regulates the examinations.

The principal statutes regulating the admission, etc., etc., of solicitors are:—The Solicitors Act, 1843, 6 & 7 Vict. c. 43; The Solicitors Act, 1860, 23 & 24 Vict. c. 127; The Attorneys and Solicitors Act, 1870, 33 & 34 Vict. c. 28; The Attorneys and Solicitors Act, 1874, 37 & 38 Vict. c. 68; The Solicitors Act, 1877, 40 & 41 Vict. c. 25; and the Solicitors Act, 1888, 51 & 52 Vict. c. 65. See *Chit. Stat.*, vol. 6, tit. '*Solicitors,*' and consult *Cordery on Solicitors*, 2nd ed. The remuneration of solicitors for non-contentious business is provided for by General Orders under the Solicitors' Remuneration Act, 1881, *infra.*

The Act of 1843 provides (s. 3) that no person shall be admitted as an attorney or solicitor unless he shall have been bound by contract in writing (commonly called 'articles,' whence the title 'articled clerk') to serve as clerk for five years to a practising attorney or solicitor. The period is reduced to three years if such person possesses a university degree (Act of 1860, s. 2), or has previously been called to the bar (s. 3), or has been ten years clerk to an attorney previous to being articled (s. 4), or has previously been a Scotch solicitor (s. 15), or has been a member of the Faculty of Advocates in Scotland (35 & 36 Vict. c. 81), and *may be* reduced to four years *by regulations of the judges*, if such person has passed an university examination (Act of 1877, s. 13: regulations under this section reduce the period in the case of a person who has passed moderations at Oxford or the previous examination, at Cambridge, or the matriculation examination, being placed in the first division at the University of London).

As to *Articled Clerks*, it is provided as follows:—No solicitor may have more than two at one time nor any after discontinuing business (Act of 1843, s. 4), although solicitors being in partnership may have two each (*Ex parte Bayley*, 9 *B. & C.* 691), and there may be a binding to a firm, which operates as a binding to each member of it (*Re Holland*, *L. R.* 7 *Q. B.* 277). If the solicitor become bankrupt, etc., the articles may be discharged or assigned to another person by the High Court (Ib., s. 5), and if the solicitor die or leave off practice, or the articles be cancelled by mutual consent, fresh articles may be entered into with another solicitor (Ib., s. 13). The clerk may not engage in any other employment without the consent in writing of the solicitor, *and* the sanction of a judge of the High Court (Act of 1860, s. 10, as amended by Act of 1874, s. 4). Within six months of the execution of the articles, an affidavit of the execution must be made and filed by the solicitor; such affidavit may be filed after the six months, but if it be filed after the six months the service of the clerk is computed from the day of filing, unless the High Court otherwise order (Act of 1843, s. 9, and see *Ex parte Banyard*, *L. R.* 10 *C. P.* 638). Before admission the clerk must make an affidavit of having duly served (Act of 1843, s. 14), but the Master of the Rolls has power to admit, in case of an irregular service occasioned by accident, mistake, or some other sufficient cause (Act of 1874, s. 15).

Examinations of persons intending to become solicitors are held as fixed by the Act of 1877, and the regulations of the Incorporated Law Society under that Act. They are three

in number—the preliminary, the intermediate, and the final examination. The preliminary is held in each of the months of February, May, July, and October; the intermediate and final in each of the months of January, April, June, and November (*Regs.* 6, 12, 20). There is an appeal to the Master of the Rolls, against the refusal of a certificate of having passed the intermediate or final, by any person who has been refused, and who objects to the refusal, 'whether on account of the nature or difficulty of the questions put to him by the examiners, or on any ground whatever' (Act of 1877, s. 9). Persons possessing an university degree are exempted from the preliminary examination (*Ib.*, s. 10), and the Lord Chief Justice of England or the Master of the Rolls may grant special exemptions from that examination (*Ib.*, s. 11). Barristers of not less than five years' standing *having been disbarred*, and having obtained certificates of fitness from two benchers, are exempted from the intermediate examination (*Ib.*, s. 12). A solicitor is exempted from various offices requiring personal service, and cannot be compelled to serve on juries (33 & 34 Vict. c. 37). If a solicitor bring a personal action he has the privilege of laying the venue in Middlesex (2 *Wm. Bl.* 1065), and (before the establishment of the Supreme Court of Judicature) he was entitled to sue and be sued in his own court. A solicitor is liable to his client for negligence, and may be struck off the roll for misconduct. No application to strike a solicitor off the roll, or to compel him to answer an affidavit, may be made until fourteen clear days after notice to the registrar of solicitors of the intended application. See 37 & 38 Vict. c. 68, s. 7, which Act also makes provisions for penalties for wrongfully acting as a solicitor and for prosecuting such an offence in a summary way. A solicitor cannot sue for (although he may set off) his bill of costs until one month after its delivery in the manner prescribed by 6 & 7 Vict. c. 73, s. 37. He has a general lien for his costs on the papers of his clients. Communications made to him in his professional character by a client are privileged.

The Act of 1870 enacts that the remuneration of solicitors may be fixed by agreement. The Act also provides (s. 16) that a solicitor may take security from his client for his future fees, charges, and disbursements, to be ascertained by taxation or otherwise: and also that (s. 17), subject to any general rules or orders thereafter to be made, upon every taxation of costs, fees, charges, or disbursements, the taxing officer may allow interest at such rate and from such time as he thinks just, on moneys disbursed by the attorney or solicitor for his client, and on moneys of the client in the hands of the solicitor, and improperly retained by him. Section 18 enacts that upon any taxation of costs the taxing officer may, in determining the remuneration, if any, to be allowed to the solicitor for his services, have regard, subject to any general rules or orders thereafter to be made, to the skill, labour, and responsibility involved.

The 34 Vict. c. 18 repeals the disqualification of attorneys, solicitors, and proctors from being justices of the peace for counties, but provides that 'no person shall be capable of becoming a justice of the peace for any county in which he shall practise his profession.

The Act of 1888 transfers the custody of the 'Roll of Solicitors' from the Clerk of the Petty-Bag to the Incorporated Law Society as Registrar of Solicitors, and provides that such Roll is to be open to public inspection without any fee. It also provides for the registration of articles of clerkship, and the admission of solicitors by the Master of the Rolls, and constitutes a committee of the Council of the Incorporated Law Society for the purpose of hearing and reporting to the High Court of Justice upon any application to strike a solicitor off the rolls. The costs to be allowed to solicitors on taxation in *contentious business* in the Supreme Court are regulated by R. S. C., 1883, Ord. LXV., Rules 8—27, re-enacting, with amendments, the Order in Council of August 12th, 1875, Ord. VI.

The remuneration of solicitors in conveyancing and other *non-contentious* business is fixed by a General Order called 'The Solicitors' Remuneration Order,' 1882, which came into force on January 1st, 1883, under the Solicitors' Remuneration Act, 1881, 44 & 45 Vict. c. 44, with reference to (*inter alia*) the amount of money to which the business relates, and the skill, labour, and responsibility involved therein on the part of the solicitor.

The Act of 1881 was passed in the same year as the Conveyancing Act (see that title), and was introduced into Parliament with that Act and the Settled Land Act (see that title). The object of it may best be understood by a study of the ninth chapter of *Williams' Real Property*, in which the old practice of payment by mere *length* of documents (which the Conveyancing Act was intended to shorten) is sharply criticised.

As to the admission to the Supreme Court of Solicitors of Colonial Courts, see 20 & 21 Vict. c. 39, and the Judicature Act, 1873, s. 87.

As to solicitors ('Law Agents') in Scotland, see 36 & 37 Vict. c. 63.

Solicitor-General, a law officer of the Crown, appointed by patent, and holding office during the continuance of the ministry of which he is a subordinate member. He is usually knighted. He ranks after the Attorney-General. To the household of a queen-consort there belongs an officer with this appellation.—3 *Steph. Com.* See title PRECEDENCE.

Solicitor to the Suitors' Fund, an officer of the Court of Chancery, who is appointed in certain cases guardian *ad litem.*—See *Smi. Ch. Pr.* 101.

Solidata turæ, twelve acres.

Solidatum, absolute right or property.

Solidum. To be bound *in solido* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro ratâ parte.*

Solidus legalis, a coin equal to 13*s.* 4*d.* of the present standard.—4 *Steph. Com.*

Solinus terræ, a ploughland.—*Cowel.*

Solitary confinement. The Criminal Law Consolidation Acts of 1861 each provide (see CONFINEMENT, SOLITARY) that no offender shall be kept in solitary confinement for a longer period than one month at a time, nor three months in the space of a year.

Sollar, the lower part of a house, a room.—*Spelm s. v. Solarium.*

Solo cedit, quicquid solo plantatur. Office of Exec. 57.—(What is planted in the soil belongs to the soil.)

Solum rex hoc non facere potest, quod non potest injustè agere. 11 Co. 72.—(This alone the king cannot do, he cannot act unjustly.)

Solus Deus facit hæredem, non homo. Co. Litt. 5.—(God alone makes the heir, not man.)

Solutio, a discharge; the performance of that to which a person is bound.—*Civ. Law.*

Solutione feodi militis parliamenti, or **Feodi burgensis parliamenti,** old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if it had been refused.—35 *Hen. VIII.* c. 11.

Solvendo esse, to be in a state of solvency, i.e., able to pay.

Solvere pœnas, to pay the penalty.

Solvit ad diem, was a plea in an action of debt, on bond, etc., that the money was paid at the day appointed.—1 *Selw. N. P.,* 13th ed., 512.

Solvit ante diem, a plea that the money was paid before the day appointed.

Solvit post diem, was a plea that the money was paid after the day appointed.—1 *Selw. N. P.,* 13th ed., 513.

Son assault demesne, a justification in an action of assault and battery, on the ground that the plaintiff made the first assault, and what the defendant did was in his own defence. It was a plea by confession and avoidance.—1 *Selw. N. P.,* 13th ed., 2. See now PLEADING; STATEMENT OF DEFENCE.

Son-in-law [*gener,* Lat.], the husband of one's daughter.

Sontage, a tax of 40*s.* heretofore laid upon every knight's fee.—*Cowel.*

Sorcery. Prosecution for witchcraft, sorcery, etc., or for charging another with any such offences, is abolished by 9 Geo. II. c. 5; but the same Act enacts that persons *pretending* to use witchcraft, sorcery, etc., shall suffer one year's imprisonment on conviction. Persons using any subtle craft, means, or device, by palmistry or otherwise, to deceive the people, are rogues and vagabonds, and to be punished with imprisonment and hard labour.—5 *Geo. IV.* c. 83, s. 4.

Sorehon, or **Sorn,** an arbitrary exaction, formerly existing in Scotland and Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers, by way of contempt called *Gilliwitfitts,* and lived on free quarters. See *Bell's Scotch Law Dict.*

Sorites, a form of argument which consists in consolidating several syllogisms (see SYLLOGISM), in which the subject of the minor premiss is the same, so as to suppress the *conclusion* in every syllogism but the last, and the *minor premiss* in every syllogism but the first.

Sors, principal; to distinguish it from interest.—*Cowel.*

Sothsaga, or **Sothsage** [fr. *soth,* true, and *saga,* Sax., testimony], history.—*Cowel.*

Soul-scot, a mortuary.—2 *Steph. Com.*

Sounding in damages. An action is said to sound in damages when it is brought for the recovery of unascertained damages.

Sourcar, a merchant or banker; a money-lender.—*Indian.*

South Africa. The South Africa Act, 1877, 40 & 41 Vict. c. 47, to authorise, by Order in Council, the confederation, under one Government, of such of the South African Colonies as may agree thereto.

South Sea fund, the produce of the taxes appropriated to pay the interest of such part of the National Debt as was advanced by the South Sea Company and its annuitants. The holders of South Sea Annuities have been paid off, or have received other stock in lieu thereof.—2 *Steph. Com.,* 7th ed., 578.

South Wales, Highways. As to the better management and control of the highways in South Wales, see 23 & 24 Vict. c. 68, and 41 & 42 Vict. c. 34.

Sovereign, a chief or supreme person. See QUEEN, Also, a piece of money of the value of twenty shillings.

Sovereign power, or **Sovereignty,** that power in a state to which none other is superior.

Sowlegrove, February, so called in South Wales.—*Cowel.*

Sowming and Rowming, the apportioning or placing of cattle on a common, according to the respective rights of various parties interested. See *Bell's Scotch Law Dict.*

Sowne [fr. *souvenu,* Fr., remembered], such as is leviable.—*Cowel.*

S. P., *sine prole,* i.e., without issue.

Spadarius, a sword bearer.—*Blount.*

Spado, an eunuch; an impotent man.—*Civ. Law.*

Sparsim [Lat.], dispersedly.

Spatæ Placitum, a court for the speedy execution of justice upon military delinquents.—*Cowel.*

Speaker of the House of Commons. This great officer is the organ or spokesman of the Commons; in modern times he is more occupied in presiding over the deliberations of the House than in delivering speeches on their behalf. The principal duties of the Speaker are the following:—To preside, as Chairman of the House, at its debates when not in committee; to give a casting vote, when the votes are equal; to read to the Sovereign petitions or addresses from the Commons, and to deliver in the royal presence, whether at the palace or in House of Lords, such speeches as are usually made on behalf of the Commons; to reprimand persons who have incurred the displeasure of the House; to issue warrants of committal or release for breaches of privilege; and to communicate in writtng with any parties, when so instructed by the House. He is chosen by the House of Commons, from amongst its members, subject to the approval of the Crown, and holds office till the dissolution of the Parliament in which he was elected. His salary is 6,000*l.* a year, with a furnished residence. At the end of his official labours he is usually rewarded by a peerage. See 17 & 18 Vict. c. 84 as to the appointment of a Deputy Speaker during the Speaker's absence.

Speaker of the House of Lords. The Lord Chancellor, by virtue of his office, becomes, on the delivery of the seal to him by the Sovereign, Speaker of the House of Lords. He is usually, but not necessarily, a peer. There has always been a Deputy Speaker, and formerly there were two or more, but since the year 1815 there has been only one. The chairman in committees generally fills this office. In the absence of the Lord Chancellor and of the Deputy Speaker, it is competent to the House to appoint any noble lord to take the woolsack. The Speaker is the organ or mouthpiece of the House, and it therefore is his duty to represent their lordships in their collective capacity, when holding intercourse with other public bodies or with individuals. He has not a casting vote upon divisions, for should the numbers prove equal, the non-contents prevail. The Deputy Speaker of the Lords is appointed by the Crown.—*Dod's Parl. Comp.*

Speaking demurrer, one in which new facts, which did not appear upon the face of a bill in equity, were introduced to support a demurrer. See 1 *Dan. Ch. Pr.,* 5th ed., 538. See now DEMURRER.

Special administration, a limited one, as of certain specific effects, such as a term of years.

Special administrator. See last title.

Special agent, one authorised to transact only a particular business for his principal as distinguished from a general agent.

Special bail, bail above or to the action. See BAIL, and 1 & 2 Vict. c. 45, and 32 & 33 Vict. c. 38.

Special bailiff, one chosen by a party himself to execute process in the sheriff's hands; the appointment of such a bailiff relieves the sheriff of all responsibility.—2 *Steph. Com.*

Special bastard, one born of parents before marriage, the parents afterwards intermarrying. By the civil and Scotch law he would be then legitimated.

Special case. It is provided by R. S. C. 1883, Ord. XXXIV., that the parties may, after writ issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court, and also that 'if it appear to the Court or a judge, either from the statement of claim or defence, or reply, or otherwise, that there is in any action a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case, or in such other manner as the Court or judge may deem expedient.' Similar power is given to referees to state a case by Ord. XXXVI., r. 52. As to special case before the Judicature Acts, see C. L. P. Act, 1852, ss. 42—48, and 13 & 14 Vict. c. 35 (Turner's Act). Where at a trial in a court

of oyer and terminer, gaol delivery, or quarter sessions, any question of law arises on motion in arrest of judgment (or even independently of such motion), which such court finds too difficult for its determination, it is empowered by 11 & 12 Vict. c. 78, to reserve the question and to state it in the form of a special case for the judges of the superior courts as a court of criminal appeal; and in the meantime to postpone the judgment, or respite the execution of it. As to the present constitution of this court, see CROWN CASES RESERVED.

As to cases stated by justices, see 20 & 21 Vict. c. 43, and Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 33, by which any person aggrieved by a conviction, order, determination, or other proceeding of a Court of Summary Jurisdiction, and desirous of questioning the same on the ground of its being erroneous *in point of law*, may appeal from the same to the High Court by special case stated by the justices. Justices at Quarter sessions also, to whom there is an appeal from Courts of Summary Jurisdiction both on points of law and fact, may state a special case on any point of law for the opinion of the High Court.

Special claim, a claim not enumerated in the orders of 22nd April, 1850, which required the leave of the Court of Chancery to file it.—*Smi. Ch. Pr.* 645. Such claims are abolished. See CLAIM IN EQUITY.

Special commission, an extraordinary commission of oyer and terminer and gaol delivery, issued by the Crown to the judges when it is necessary that offences should be immediately tried and punished.

Special constables, persons appointed by the magistrates to execute warrants on particular occasions.—41 *Geo. III.* c. 78; or to assist in keeping the peace, when the ordinary constables are insufficient for that purpose. See 1 & 2 Wm. IV. c. 41, s. 8 of which imposes a penalty for each refusal to serve when duly called upon, while s. 2 allows a Secretary of State to order persons to be sworn in though exempt by law.—1 & 2 Vict. c. 80 (relating to canal and railway works), and s. 196 of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, by which borough justices 'shall appoint in October in every year so many as they may think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.'

Special damage, a particular loss flowing from the act complained of, in addition to the wrongful nature of the act itself.

Special defence, in a County Court. A defendant must give notice to the plaintiff when he intends to rely on a defence of set-off or counter-claim, infancy, coverture, statute of limitations, bankruptcy, or equitable defence.

Special demurrer, a demurrer for some defect in the form of the opposite party's pleading. Abolished by C. L. P. Act, 1852, s. 51. Such defects in pleading as were formerly the subject of special demurrer may now be met by an application to a judge at chambers to reform the pleading.

Special examiner, one appointed to take examinations in suits in Chancery, etc., appointed, by agreement of the parties, instead of the officer of the court, for the greater despatch of the suit. He was generally a professional lawyer.—*Smi. Chancery Prac.* 27; and 15 & 16 *Vict.* c. 86, ss. 31 *et seq.*

Special finding, of a jury, instead of amendment of variance. See R. S. C. 1883, Ord. XXXVI., r. 41.

Specialia generalibus derogant. L. R. 1. C. P. 546.—(Special words derogate from general words.) A special provision as to a particular subject matter is to be preferred to general language, which might have governed in the absence of such special provision. See also 4 *Macq. Sc. App. Ca.* 522.

Special Indorsement, an indorsement in full on a bill of exchange or promissory note, which, besides the signature of the indorser, expresses in whose favour the indorsement is made. Thus: 'Pay Mr. C. D. or order, A. B.;' the signature of the indorser being subscribed to the direction. Its effect is to make the instrument payable to C. D. or his order only. See Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, s. 34, subs. 2.

Special indorsement on summons. See SUMMONS, WRIT OF.

Special injunctions, prohibitory writs or interdicts against acts of parties, such as waste, nuisance, piracy, etc. See INJUNCTION

Special jury, a jury consisting of persons who, in addition to the ordinary qualifications, are of a certain station in society, as esquires, bankers, or merchants, etc. The 33 & 34 Vict. c. 77, s. 6, provides, that every man whose name shall be on the jurors' book for any county in England or Wales, or for the county of the City of London, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or shall be a banker or merchant, or who shall occupy a private dwelling-house rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than 100*l.* in a town containing, according to the census then next preceding the preparation of the jury list, 20,000 inhabitants and upwards

or rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than 50*l.* elsewhere, or who shall occupy premises other than a farm, rated or assessed as aforesaid on a value of not less than 100*l.*, or a farm rated or assessed as aforesaid on a value of not less than 300*l.*, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively.

Right to Special Jury.—Either party, if entitled to a jury, may have a special jury upon giving notice in writing to that effect (R. S. C., Ord. XXXVI., Rule 7).

Fees of Jurors.—Each special juror is entitled to receive one guinea only for each cause he tries, but in very long cases the parties have occasionally agreed to pay more. The provisions as to payment of jurors, introduced by the 33 & 34 Vict. c. 77, s. 22,—by which each special juror was entitled to one guinea each day of attendance,—were repealed by 34 & 35 Vict. c. 2.

Cost of special Jury.—The party upon whose application the special jury is struck bears all the expenses occasioned at the trial of the cause by the special jury, and is not allowed any more costs than for a common jury, unless the judge, immediately after the verdict, certifies upon the back of the record that it was a proper cause to be tried by a special jury. See also JURY, and TRIAL. Consult *Chit. Arch. Prac.*, 12th ed., 381, 383, 434, 517.

Special license, one granted by the Archbishop of Canterbury to authorise a marriage at any time or place whatever.—2 *Steph. Com.*, and see MARRIAGE.

Special motion. See MOTION.

Special occupancy. Where an estate is granted to a man and his heirs during the life of *cestui que vie*, and the grantee dies without alienation, and while the life for which he held continues, the heir will succeed, and he is called a special occupant. See 7 Wm. IV. and 1 Vict. c. 26, ss. 3, 6.

Special paper, a list kept in the courts of common law, and afterwards in the Queen's Bench Division of the High Court, in which list special cases, etc., to be argued are set down.

Special pleaders, members of an inn of court who devote themselves mainly to the drawing of pleadings, and to attending at judges' chambers. If not called to the bar, as was in former times (when many special pleaders practised as such prior to being called to the bar) frequently the case, but has latterly become very uncommon, they take out annual certificates on which a duty of 9*l.* is payable, under the Stamp Act, 1870. Pleaders, in proportion to barristers, have, of late years, considerably diminished in number.

Special pleading, the science of pleading. It is a forensic invention, due to the dialectic genius of the middle ages, but nearly destroyed by modern innovation. See *Steph. on Plead.; Bullen and Leake on Pleading;* and *Chitty's Precedents.* See PLEADING.

Special pleas, were pleas which were not in the form of what were called general issues, but which alleged affirmative matter, as infancy, coverture, statute of limitations, etc. See now PLEADING; STATEMENT OF DEFENCE.

Special pleas in bar in criminal matters go to the merits of the indictment, and give a reason why the prisoner ought to be discharged from the prosecution: they are of four kinds, viz., a former acquittal, a former conviction, a former attainder, or a pardon.

Special property, qualified property, which see.

Special referee. See REFERENCE.

Special sessions. See SESSIONS.

Special tail, where an estate-tail is limited to the children of two given parents, as to A. and the heirs of his body by B., his wife. —1 *Steph. Com.*

Special traverse, a form of pleading, abolished by C. L. P. Act, 1852, s. 65.

Special trust. Where the machinery of a trust is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts.

Special trustee. See last title.

Special verdict, a special finding of the facts of the case, leaving to the Court the application of the law to the facts thus found. See R. S. C. 1883, Ord. XXXVI., r. 31. For instance of special verdict in a criminal case (which is very rare) see *Reg.* v. *Dudley*, 14 *Q. B. D.* 273.

Specialty, a contract by deed.

Specialty debts, bonds, mortgages, debts, secured by writing under seal; they formerly ranked next to those of record, and above simple contract debts; but this distinction has now been abolished by 32 & 33 Vict. c. 46, s. 1, as to which see SIMPLE CONTRACT DEBT.

Specie, metallic money. Anything *in specie* is anything in its own form, not any equivalent, substitute, or reparation.

Specification, a particular and detailed

account of a thing; also, a description of a patent directed to be enrolled in the High Court of Chancery, within a specified time, its object being to put the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it when the period of exclusive privilege has expired. See LETTERS PATENT.

As to indexes of specifications for the public use, see Patent Act, 1883, 46 & 47 Vict. c. 57, s. 40.

Specific legacy. See LEGACY.

Specific performance of agreements. Equity, in obedience to the cardinal rule of natural justice that a person should perform his agreement, enforces, pursuant to a regulated and judicial discretion, the actual accomplishment of a thing stipulated for, on the ground that what is lawfully agreed to be done ought to be done, and indeed is, in its contemplation, considered as now done. The Common Law has not recognised this principle; it has only given damages to a suffering party for the non-performance of an executory agreement. The C. L. P. Act, 1854, however, imparted to the Common Law writ of *mandamus* a little more efficacy. Consult *Fry's Specific Performance of Contracts.*

The several requisites of a contract, which will be directed to be specifically executed, are these:—

(*a*) The contract must be entered into by competent parties, or their lawfully authorised agents. The general rule is, that all parties who can bind themselves at law are competent to enter into agreements, which equity will enforce.

(*b*) The parties must contract willingly, without undue bias, and not under any improper influence.

(*c*) The terms of the contract must be understood by the parties without mistake or misapprehension, and must be certain and defined, importing a concluded agreement.

(*d*) The contract must be entered into for a valuable executory consideration, such as marriage or money; and not for a merely good consideration, how meritorious soever it may be.

(*e*) While a valuable consideration exists on the one side, there must be a promise or sale on the other, together with a mutuality of remedy between the parties. In other words, there must be some inducement passing from one party in order to render binding the promise of the other.

(*f*) The contract must be in writing if so required by the Statute of Frauds. See FRAUDS.

Equity, however, will entertain actions for the specific performance of contracts which are not reduced into writing, where there does not appear any danger of fraud or perjury. The following parol contracts will, therefore, be specifically enforced:—

(1) A sale ordered by a decree of a Court, for the judgment of the Court in confirming such a purchase takes the transaction out of the statute. It is, however, now usual for the purchaser to subscribe a written or printed contract.

(2) Where a parol agreement has been so substantially performed in part as to render it inequitable not to enforce the whole of it.

(3) Where the agreement has not been reduced into writing through the fraud of one of the parties, the agreement will be exempted from the operation of the statute, and allowed to be proved by parol evidence.

(4) Another case in which parol agreements are considered binding is when the land is partnership property. Where a partnership, or an agreement in the nature of one, exists between two persons, and land is acquired by the partnership as a substratum of it, the land is in the nature of stock-in-trade of the partnership; and this being proved as an independent fact, the Court, without regarding the Statute of Frauds, will inquire of what the partnership stock consisted, whether that stock be land or any other kind of property.

(5) Where a suit is brought for the execution of a verbal agreement fully set forth in the plaintiff's claim, and the defendant puts in his answer or defence thereto, and confesses the agreement, the case is thereby taken entirely out of the mischief intended to be prevented by the statute, and there being no danger of perjury, the Court will decree a specific performance.

Equity will refuse this relief when damages would be commensurate with the injury sustained; therefore, as a broad rule, though performance of contracts affecting realty will be decreed, the performance of contracts for the sale of stock, goods, or other things of a merely personal nature will not, because the damages which can be recovered for their breach will purchase other stock or goods. An award of damages may be combined with a decree for specific performance under s. 24 of the Judicature Act, 1873, which repeats, with enlargements, 21 & 22 Vict. c. 27, prior to which Act the Court of Chancery had no power to award damages.

By the Judicature Act, 1873, s. 34, all causes and matters for the specific performance of contracts between vendors and purchasers of real estates, including contracts for leases,

are assigned to the Chancery Division of the High Court of Justice. Specific performance may be obtained up to a limited amount in the County Courts under s. 67 of the County Courts Act, 1888.

Speedy execution. A plaintiff having obtained a *verdict* in a cause was not entitled to issue execution until 14 days, unless a judge should order execution to issue at an earlier period, which was called 'speedy execution.'—*C. L. P. Act*, 1852, s. 120, and *H. T.* 1853, r. 57. Under the Jud. Acts, immediate execution is the rule. See EXECUTION.

Speedy Judgment Act, 1 Wm. IV. c. 7.

Spes recuperandi [Lat.], *the hope of recovery.*

Spigurnel [fr. *spicurran*, Sax., to shut up or inclose], the sealer of the royal writs.

Spinster, an unmarried woman, so called because she was supposed to be occupied in spinning.

In Scotland, the wife's or cognate side of the family is termed 'the spindle-side,' in contradistinction to the agnate or husband's side, which is denominated the 'spear' or 'sword-side.' The armorial bearings of the families of widows and spinsters are painted on this spindle, which is popularly termed a lozenge.

Spirits. By 23 & 24 Vict. c. 114, and the Spirits Acts, 1880, 43 & 44 Vict. c. 24, the excise regulations relating to the distilling, rectifying, and dealing in spirits have been successively amended and consolidated.

As to licenses for the sale of spirits, see INTOXICATING LIQUORS; and as to barring of action for price of spirits sold in small quantities, see TIPPLING ACT.

Spiritual corporations, corporations the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

They are of two sorts:

(1) *Sole*, as bishops, certain deans, parsons, and vicars; or

(2) *Aggregate*, as dean and chapter, prior and convent, abbot and monk.

Spiritual courts, ecclesiastical courts, which see.

Spiritual lords, the archbishops and bishops of the House of Peers.—1 *Br. & Had. Com.*, 184, and 2 *Steph. Com.*

Spiritualism, the pretending to hold communication with spirits. The pretender may be convicted as a rogue and a vagabond and imprisoned for three months; and upon a second conviction he may be whipped.—*Monck* v. *Hilton*, 2 *Ex. D.* 268. (See VAGRANT.) Large gifts by an aged widow to a so-called 'Spiritual Medium' were set aside on the ground of undue influence in *Lyon* v. *Home*, *L. R.* 6 *Eq.* 655.

Spirituality, that which belongs to one as an ecclesiastic.

Spirituality of benefices, the tithes of land, etc.

Spital, or **Spittle**, a charitable foundation; a hospital for diseased people.—*Cowel.*

Splitting a cause of action, suing for only a part of a claim or demand, with a view to suing for the rest in another action. This is not permitted in the County Courts. See *Grimbly* v. *Ackroyd*, 1 *Ex.* 479, and s. 81 of the County Courts Act, 1888.

Spoliation, a writ or suit for the fruits of a church or the church itself, to be sued in the spiritual and not in the temporal court. It lies for one incumbent against another, where they both claim by one patron, and the right of patronage does not come in question.—3 *Steph. Com.*

Spoliatus debet ante omnia restitui. 2 Inst. 714.—(A person who has been despoiled, ought to be restored to his former state before anything else.)

Sponsalia, or **Stipulatio sponsalitia**, espousals; mutual promises to marry.—*Civ. Law.*

Sponsio judicialis, the feigned issue of the Romans. See FEIGNED ISSUE.

Sponsions, agreements or engagements made by certain public officers, as generals or admirals in time of war, either without authority, or in excess of the authority under which they purport to be made.—*Inter. Law.*

Sponsor, a surety; one who makes a promise or gives security for another, particularly a godfather in baptism.

Sponte oblata, a free gift or present to the Crown.

Sponte virum mulier fugiens et adultera facta, dote suâ careat, nisi sponsi sponte retracta. Co. Litt. 32 b.—(Let a woman leaving her husband of her own accord, and committing adultery, lose her dower, unless taken back by her husband of his own accord.)

Sportula, or **Sportella**, a dole or largess either of meat or money given by princes or great men to the poor. It was properly the pannier or basket in which the meat was brought, or with which the poor went to beg it, thence the word was transferred to the meat itself, and thence to money sometimes given in lieu of it.—*Encyc. Lond.*

Spousal, marriage-nuptials.

Spouse-breach, adultery, as opposed to simple fornication.—*Cowel.*

Spreading false news, to make discord between the sovereign and nobility, or concerning any great man of the realm, is a

misdeameanour, punishable at Common Law by fine and imprisonment.—4 *Steph. Com.*

Spring guns. The setting spring guns, etc., calculated to destroy life or inflict grievous bodily harm on a trespasser, is a misdemeanour.—24 & 25 *Vict.* c. 100, s. 31.

Springing use, contingent use, which see.

Spuilzie [fr. *spoliatio*, Lat.], the taking away or meddling with movables in another's possession, without the consent of the owner or authority of law.—*Bell's Scotch Law Dict.*

Spurii [either fr. σπορά̀δην, Gk., at hazard; or fr. *sine patre*, Lat., without a father], children conceived in prostitution.—*Sand. Just.*, 7th ed., 38.

Squibs. The unlicensed making or selling or exposing to sale fireworks, or the throwing, casting, or firing squibs or other fireworks in or into any thoroughfare or public place, is an offence punishable by fine (see Explosives Act, 1875, ss. 48, 49, 80, replacing the repealed 23 & 24 Vict. c. 139, amended by 24 & 25 Vict. c. 130, and 25 & 26 Vict. c. 98); and may be prosecuted by indictment, either under the statute or at Common Law. See also (as to the Metropolis) 2 & 3 Vict. c. 47, s. 52; and also the squib case, *Scott* v. *Shepherd*, 2 *Bl.* 892, and 1 *Smi. L. C.*

Squire, contraction of esquire, which see; and see 1 *Steph. Com.*

S. S., Collar of. Collars bearing these letters, or consisting of many of them linked together, have been much worn by persons holding great offices in the state, e.g., by the Lord Chief Justice of England. The signification is obscure.

Stabilia, a writ called by that name, founded on a custom in Normandy, that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.

Stabilitio venationis, the driving deer to a stand.

Stabit præsumptio donec probetur in contrarium. Hob. 297.—(A presumption will stand good till the contrary is proved.)

Stablestand, one of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest, ready to shoot with a cross-bow bent at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip.—*Cowel.*

Stade, Stadium, a furlong.—*Cowel.*

Staff-herding, the following of cattle within a forest.

Stage coaches. As to the duty thereon, see 32 & 33 Vict. c. 14, repealing various previous enactments.

Stage-play. See THEATRE.

Stagiarius, a resident.—*Cowel.*

Stagnum, a pool. By this name the land and water pass.—*Co. Litt.* 5 *a.*

Stake, a deposit made to answer an event.

Stakeholder, one with whom a stake is deposited. As to when money deposited in the hands of a stakeholder, to abide the event of a wager, may be recovered, see 8 & 9 Vict. c. 109, s. 18, and the title WAGER, *post.*

St. Albans. The borough was disfranchised by 15 Vict. c. 9. As to the new see of St. Albans, see 38 & 39 Vict. c. 34.

Stale, larceny.—*Ang. Sax.*

Stallage, the liberty or right of pitching, or erecting stalls in fairs or markets, or the money paid for the same.—1 *Steph. Com.*

Stallarius, a master of the horse; also the owner of a stall in the market.—*Spelm.*

Stamp duties, a branch of the revenue. They are a tax imposed on all parchment and paper whereon certain legal proceedings and certain private instruments are written; and on licenses for various purposes.

The consolidating 'Stamp Act, 1870' (33 & 34 Vict. c. 97), superseded the very numerous older enactments (in great part repealed by the Inland Revenue Repeal Act, 1870, 33 & 34 Vict. c. 90) in regard to the duty on the various classes of instruments, but by s. 17 of the Stamp Act, 1870 (re-enacted by s. 14 of the Stamp Act, 1891), reversing the former law (see *Buckworth* v. *Simpson*, 1 *C. M. & R.* 384), the stamp to be affixed to an unstamped document to render it admissible in evidence was not the stamp in accordance with the law at the time of affixing it, but the stamp in accordance with the law in force at the time when the document was first executed.

Very important alterations in the law of stamps were effected by the Customs and Inland Revenue Act, 1888, 51 Vict. c. 8. Prior to that Act it was no offence not to stamp any instruments except receipts, the provision that unstamped instruments should be inadmissible in evidence being considered sufficient for the protection of the revenue. With respect to very large classes of instruments, being either (1) Bonds, (2) Conveyances or Transfers, (3) Leases or Agreements for Leases, (4) Mortgages whether legal or equitable, or (5) Settlements, the Act of 1888 created the new offence of not stamping, imposing the special penalty of ten pounds, which falls upon the obligee, vendee or transferee, lessee or intended lessee, mortgagee, or settlor as the case may be, for not stamping the instrument within thirty days after execution in ordinary cases. The same Act

barred any right to sue for moneys assured by an unstamped assignment of a life policy, made void every condition of sale framed with a view of precluding objection or requisition upon the ground of absence or insufficiency of stamp executed after the passing of the Act, and abridged, from twelve months to three, the period after execution of an instrument within which the Commissioners of Inland Revenue might remit the penalties payable on stamping, after execution, unstamped or insufficiently stamped instruments generally.

Many alterations in the law of stamps having been effected since the passing of the Act of 1870, the enactments relating to Stamps were again consolidated, with a few immaterial amendments, by the Stamp Act, 1891, 54 & 55 Vict. c. 91, the 14th section of which regulates the terms on which instruments not duly stamped may be received in evidence, while the 15th imposes penalties on the stamping of conveyances, leases, etc., after execution. In the same year the Stamp Duties Management Act, 1891, 54 & 55 Vict. c. 38, repealing and re-enacting the Stamp Duties Management Act, 1870, regulated the sale of stamps, the allowance for spoiled stamps, and made the forgery of stamps and dies a felony.

Standard, that which is of undoubted authority, and the test of other things of the same kind; a settled rate. See 'The Weights and Measures Act, 1878.'

Standing by, sanctioning by silence and inaction. See LYING BY.

Standing mute. See MUTUS.

Standing orders, general regulations to be observed in passing private Acts through Parliament. An edition of the Standing Orders of both Houses of Parliament is published each year.

Stannary [fr. *stannum*, Lat.; *stéan*, Cornish, tin], a tin mine.

There are stannary courts in Devonshire and Cornwall for the administration of justice among the tinners therein. They are courts of record of the same limited and exclusive nature as those of the counties palatine. They are held before a judge called the vice-warden, in virtue of a privilege granted to the workers in the tin mines there to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by following their lawsuits in other courts. Error did not lie to the superior courts, but by 18 & 19 Vict. c. 32, s. 26, from all decrees and orders of the vice-warden on the Equity side of his court, and from all judgments of the vice-warden on the Common Law side thereof, there was an appeal to the lord-warden, and from the lord-warden a final appeal to the Judicial Committee. But now by the Judicature Act, 1873, s. 18, all the jurisdiction of the lord-warden is transferred to the Court of Appeal. See Jud. Act, 1875, s. 2. See also 6 & 7 Wm. IV. c. 106; 2 & 3 Vict. c. 58; 11 & 12 Vict. c. 83; 18 & 19 Vict. c. 32; 24 & 25 Vict. c. 95; and 32 & 33 Vict. c. 19.

Staple. A public mart which anciently was appointed by law to be held in Westminster, Newcastle, Bristol, and other places. A court was held before the mayor of the staple, which court was governed by the law merchant. It appears from Statute 14 Ric. II., that the staple goods of England then were wool, woolfels, leather, lead, tin, cloth, butter, cheese, etc.

Staple, statute of the, 27 Edw. III. st. 2.

Staple Inn, an Inn of Chancery. See INNS OF CHANCERY.

Star [fr. *starrum*, contr. fr. *shetar*, Heb., a deed or contract], the deeds, obligations, etc., of the Jews; also a schedule or inventory.—4 *Steph. Com.*

Star chamber [*chambre des estoylles*, Fr.], *camera stellata*, which see.

Stare decisis, to abide by authorities or cases already adjudicated upon.

Stare in judicio [Lat.], to sue; to litigate in a court.

Starrum. See STAR.

Statement of claim. The mode in which, under the Judicature Acts, a plaintiff begins his pleading, substituted for the former Bill in Chancery or Declaration at Common Law. The delivery of the statement of claim is regulated by R. S. C. 1883, Ord. XX., which provides that none *shall* be delivered if the writ be specially indorsed, and that none *need* be delivered, unless the defendant require it by notice, in case of which requirement it must be delivered within five weeks from the receipt of the notice, but that except in the case of a special indorsement, the plaintiff may deliver a voluntary statement of claim at his own risk as to costs if it appear that such delivery was unnecessary or improper.

Statement of defence. This form of pleading is substituted, under the Judicature Acts, for the former pleas at Common Law, and answers in Chancery, and its delivery is now regulated by R. S. C. Ord. XXI., which provides in ordinary cases for the delivery of the statement of defence within ten days from the delivery of the statement of claim, or appearance if no statement of claim be delivered.

Statesman, a freeholder and farmer in Cumberland.

State Trials, a work in 33 volumes octavo (from which 'selections' were brought out by Mr. J. Willis-Bund in 1880), containing all trials for offences against the State, and others partaking in some degree of that character, from 9 Hen. II. to 1 Geo. IV. A new series is now being brought out under the auspices of a government committee, which is expected to occupy 8 to 10 volumes; of these 3 have already appeared, under the editorship of Mr. Macdonell, who on his appointment as Master of the Supreme Court has been succeeded by Mr. J. P. Wallis.

Statham. The learning of the law was thrown into a more methodical form than it had ever yet received by this author, who was a baron of the Exchequer in the time of Edw. IV. This was in his *Abridgment of the Laws*, being a kind of digest containing most titles of the law arranged in alphabetical order, and comprising under each head adjudged cases, concisely abridged from the Year-books.—4 *Reeves*, c. xxv. 117.

Stationarius, *stagiarius*, which see.

Stationers' Hall. The 5 & 6 Vict. c. 45, authorises, in every case of copyright, the registration of the title of the proprietor at Stationers' Hall, and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to affect the copyright itself. It was founded A.D. 1553.—2 *Hall. Hist. Lit.* pt. 2, c. 8, p. 366.—3 *Steph. Com.*

Stationery Office. A Government office established as a department of the Treasury, for the purpose of supplying Government offices with stationery and books, and of printing and publishing Government papers. By the Documentary Evidence Act, 1882, 45 Vict. c. 9, documents printed under the superintendence of the office are receivable in evidence.

Statu liber, a slave made free or enfranchised by testament conditionally.—*Civ. Law.*

Status. In Roman law this term indicated the position of a *persona*. A full Roman citizen must have possessed the *status libertatis, familiæ*, and *civitatis*, which are sometimes called *tria capita*. See *Sandars' Justinian*, ed. 7, p. 14; *Mackenzie's Roman Law*, 4th ed., p. 81. The law of status thus classified men as slaves and free, citizens and aliens;—as equals and unequals, so that it may be called the law of inequality. Much in the same way the term status is used at the present time when we speak of the social status of any individual. The secondary meaning of status is that attached to it in connection with the law of contract, in which connection it signifies some disability. But whereas in Roman Law status indicated the delegation of the state rights to citizens, in modern times it is used to indicate the extension of the control of the state over the private affairs of its citizens, e.g., by the Truck Acts or Factory Act.

Status de manerio, the assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

Status of Irremovability, the right acquired by a pauper, after one year's residence in any parish, not to be removed therefrom. See SETTLEMENT.

Status quo, the existing state of things at any given date. *Status quo ante bellum*, the state of things before the war.

Statuta pro publico commodo latè interpretantur. Jenk. Cent. 21.—(Statutes made for the public good ought to be liberally construed.)

Statutable, according to statute.

Statute, a law, an edict of the legislature, an Act of Parliament. See ACT OF PARLIAMENT.

The civilians have divided statutes into three classes: personal, real, and mixed. By statutes they mean, not the positive legislation, which in England is known as Acts of Parliament, as contradistinguished from common law; but the whole municipal law of a particular state, from whatever source arising. Sometimes the word is used by them in contradistinction to the imperial Roman law, which they are accustomed to style, by way of eminence, the Common Law, since it constitutes the general basis of the jurisprudence of all continental Europe, modified and restrained by local customs and usages, and positive legislation.

Statute fair, a fair at which labourers of both sexes stood and offered themselves for hire; sometimes called also Mop.

Statute Law Revision Acts. A number of general Acts were passed from the year 1861 to 1891 inclusive, for the purpose of repealing Acts or parts of Acts which, from various causes, have become obsolete, and with the view of clearing the way for two successive editions of 'Statutes Revised,' that is, statutes in force only, as distinguished from the 'Statutes at Large,' or Statutes just as they are passed, notwithstanding the frequent repeals which take place. Particular Acts, passed for a similar purpose, are the Inland Revenue Acts Repeal Act, 1870; Promissory Oaths Act, 1871; and the Civil Procedure Acts Repeal Acts, 1879, 1881, and 1883. In 1890, as explained in an Introductory Note to vol. 4 of the 2nd edition of the Revised Statutes, a Select Committee of the House of Commons considered the subject

of statute law revision, and recommended the omission from the Revised Statutes of 'any preambles to an Act, or introductory words to a section, which though not dead were practically inoperative'; and the Statute Law Revision Acts of that year, which repeal such matter for the first time, authorise the insertion in the Revised Statutes of such brief statements as such omission may render necessary. See ACT OF PARLIAMENT.

Statute-merchant, a bond of record under the hand and seal of the debtor, authenticated by the sovereign's seal, which rendered it of so high a nature that, on failure of payment on the day assigned, execution might be awarded, without any mesne process to summon the debtor, or the trouble or charges of bringing in proofs to convict him, and thus, it is presumed, it obtained the name of a '*pocket judgment.*' Obsolete.

Statute of Frauds. 29 Car. II. c. 3. See FRAUDS.

Statute Staple, a bond of record acknowledged before the mayor of the staple, in the presence of the constables of the staple, or one of them; the only seal required for its validity was the seal of the staple, and therefore if the statute were void for any cause, it could not, as in the case of a statute-merchant, be proceeded on as a common obligation; and, wanting the sanction of the seal of the king, the sheriff, after the extent, could not deliver the lands to the conusee, but had to seize them into the king's hands; and in order to obtain possession of them, the conusee had to sue out a writ of LIBERATE, which was a writ out of Chancery, reciting the former writ, and commanding the sheriff to deliver to the conusee all the lands, tenements, and chattels by him taken into the king's hands, if the conusee would have them, until he should be satisfied his debt. Obsolete.

Statuti, advocates, members of the college. —*Civ. Law.*

Statuto mercatorio, an ancient writ for imprisoning him who had forfeited a statute-merchant bond, until the debt was satisfied. —*Reg. Orig.* 146.

Statutory Declarations Act, 1835, the short title, by virtue of s. 68 of the Conveyancing Act, 1881, of the Act 5 & 6 Wm. IV. c. 62, which substitutes declarations for oaths in a large number of cases.

The expression 'Statutory Declaration' in a statute means a declaration under the above Act.—*Interpretation Act,* 1889, s. 21.

Statutory exposition. When the language of a statute is ambiguous, and any subsequent enactment involves a particular interpretation of the former Act, it is said to contain a *statutory* exposition of the former Act.

Statutory release, a conveyance which superseded the old compound assurance by lease and release. It was created by 4 & 5 Vict. c. 21 (repealed, as being superseded by subsequent legislation, by the Stat. Law Rev. Act, 1874, No. 2), which abolished the lease for a year.

Statutory stapulæ, the ancient writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute-staple.—*Reg. Orig.* 151.

Statutum affirmativum non derogat communi legi. Jenk. Cent. 24.—(An affirmative statute does not derogate from the common law.)

Statutum Hiberniæ de cohæredibus, 14 Hen. III. The third public Act in the Statute book. It has been pronounced not to be a statute. In the form of it, it appears to be an instruction given by the king to his justices in Ireland, directing them how to proceed in a certain point where they entertained a doubt. It seems the justices itinerant in that country had a doubt, when land descended to sisters, whether the younger sisters ought to hold of the eldest, and do homage to her for their several portions, or of the chief lord, and do homage to him; and certain knights had been sent over to know what the practice was in England in such a case.—1 *Reeves,* 259.

Statutum de mercatoribus, the statute of Acton Burnell, which see.

Statutum ex gratiâ regis dicitur, quando rex dignatur cedere de jure suo regio, pro commodo et quiete populi sui. 2 Inst. 378.—(A statute is said to be by the grace of the king, when the king deigns to yield some portion of his royal rights for the good and quiet of his people.)

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. 10 Co. 101.—(When the words of a statute are special, but the reason of it general, it is to be understood generally.)

Statutum sessionum (*the statute-sessions*), a meeting in every hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between masters and servants, rating of wages, etc.—5 *Eliz.* c. 4.

Statutum speciale statuto speciali non derogat. Jenk. Cent. 199.—(One special statute does not take from another special statute.)

Staunforde, the author of the 'Pleas of the Crown,' in the reign of Philip and Mary. This book is written in French; the method of it is perspicuous, and the matter disposed with learning and accuracy. The author is uncommonly full in his quotations, the sta-

tutes are generally given at length, and whole pages are frequently transcribed from Bracton. This is in general done with success and propriety, though sometimes his author has failed him; as, among other instances, may be observed Bracton's definition of larceny, which was not law at the time Staunforde wrote.

As Staunforde has the praise of being our earliest writer on pleas of the Crown, so has his merit been acknowledged by those who have followed him in the same walk, they having, in general, adhered to the arrangement and divisions of his work. He treats of his subject under three heads: first, of crimes; next, of the method of bringing delinquents to justice; and lastly, of trials and punishment. The several titles into which these are subdivided have furnished the heads of nearly every book which has been written since his time on the same subject. —4 *Reeves*, 564.

Staying proceedings. By the Judicature Act, 1875, s. 24 (5), the Courts have power to stay proceedings in cases where an injunction or prohibition could formerly have been obtained, but in which such course, by the consolidation of the Superior Courts, is now put an end to. See further the titles of the various proceedings in an action.

Stealing. See LARCENY.

Stealing children. See KIDNAPPING.

Steam engines. As to the negligent use of the furnaces of these, see 1 & 2 Geo. IV. c. 41; and as to damaging or obstructing them, see 24 & 25 Vict. c. 97, ss. 29, 35, 36. As to their use on turnpike roads, see 27 & 28 Vict. c. 75. See also 8 Vict. c. 20, ss. 114—116.

Steam whistles. The use of steam whistles in certain manufactories is regulated by the 35 & 36 Vict. c. 61.

Steel-bow goods, corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease.—*Bell's Scotch Law Dict.*

Stellionate [*stellionatus*], a kind of crime which is committed by a deceitful selling of a thing; as if a man should sell as his own estate that which is another's.

In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the charges upon it.—*Dig.* 13. See the Clandestine Mortgage Act, 4 & 5 W. & M. c. 16.

Sterbreche, Strebrich, the breaking, obstructing, or straitening of a way.—*Termes de la Ley.*

Sterling, genuine; having passed the test; money; standard-rate. See MONEY.

Stet processus, an order of the Court to stay proceedings. Strictly, it can only be made with the consent of the parties; but where the ends of justice will be better answered by this course, it is authoritatively recommended by the Court. Each party pays his own costs. See 2 *Chit. Arch. Prac.*, 12th ed., 1507. See DISCONTINUANCE.

Stethe, or **Stede,** betokeneth properly a bank of a river, and many times a place.—*Co. Litt.* 4 *b.*

Stevedore [fr. *estivar*, Sp., to stow], a person employed to stow a cargo on board a ship.

Steward [*seneschallus*, Lat.], a ward or keeper; one appointed in the stead of another. See HIGH STEWARD.

Steward of the household. See MARSHALSEA.

Steward of a manor, the lord's deputy, who transacts all the legal and other business connected with the estate, and takes care of the court-rolls. In the royal-manors, the steward is appointed by patent. See 10 Geo. IV. c. 40, s. 14. He may make voluntary grants, which will be valid, notwithstanding any subsequent disability of the person who appointed him.

Should there be joint stewards, one may act without the other (1 *Scriv.* 130). In other manors the chief steward is usually appointed by deed, though he may be appointed by parol; but corporations must always appoint by deed under their corporate seal.

The appointment of a steward is generally during the lord's pleasure; it may, however, be for years or for life, forfeitable by abuser, misuser, nonuser, or refuser. The steward's remedy for a disturbance of his office is an action on the case for consequential damages. The Court of Queen's Bench will, upon a proper case made out, grant a writ of *mandamus* to restore a steward to his office. A steward may depute or authorise another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under-steward or deputy may authorise another as sub-deputy, *pro hac vice*, to hold a court for him, such limited authority not being inconsistent with the rule '*delegatus non potest delegare.*'

This deputy, or under-steward, may be appointed either in writing, or by parol, although the appointment of the chief steward do not contain an express authority for that purpose.

Stews, certain brothels anciently permitted in England, suppressed by Henry VIII. 2. Breeding place for tame pheasants.

Stickler, an inferior officer who cuts woods within the royal parks of Clarendon (*Cowel*); an arbitrator. 2. An obstinate contender about anything.

Stillicidium, the water that falls from the roof of a house in scattered drops.—*Civ. Law.*

Stint, Common without; common *sans nombre*, i.e., without number. See COMMON; and 1 *Steph. Com.*

Stipend, a salary; settled pay; a provision made for the support of the clergy.

Stipendiary estates, i.e., feuds, estates granted in return for services, generally of a military kind.—1 *Steph. Com.*

Stipendiary magistrates, paid magistrates. appointed in the metropolis under 2 & 3 Vict. c. 71; in municipal boroughs, on petition by the council to the Secretary of State, under the Municipal Corporations Acts, 1882, 45 & 46 Vict. c. 53, s. 161; in places of 25,000 inhabitants or more, on like representation by the local board, etc.; under 26 & 27 Vict. c. 97, and in some other places, e.g., Manchester, by special Act of Parliament. They must be barristers of at least seven years' standing in the metropolis and municipal boroughs; under 26 & 27 Vict. c. 97, they may be of five years' standing. By 21 & 22 Vict. c. 73 they may do alone all acts authorised to be done by two justices of the peace.

Stipendium [fr. *stips*, a piece of money, and *pendo*, to weigh, Lat.], wages; pay. Before silver was coined at Rome, the copper money in use was paid by weight, and not by scale.

Stipulated damage, liquidated damage, which see.

Stipulation, bargain; also, a recognizance of certain fidejussors in the nature of bail, taken in the Admiralty Courts.

It is the highest and most authentic contract known to the civil law, entered into before the magistrate or public officer, through the medium of interrogatories and answers calculated to explain the nature and extent of the undertaking, to put the parties entering into it on their guard, and to show it to be their mature and deliberate act. It could not be impeached except for fraud or deceit, and could not be released or discharged, except by an equally solemn proceeding, conducted by question and answer before the public functionary, called an acceptilation.—*Vinnius*, 677; *Sand. Just.*, 7th ed., 332.

Stiremannus, a pilot or steersman.—*Domesday.*

Stirpes. See PER STIRPES.

Stock, a race, lineage, or family, also the public funds, considered merely as perpetual annuities, redeemable at the pleasure of the Government; also the capital of a public company, as to which see SHARES.

Stockbroker, one who buys and sells stock as the agent of others. The 7 Geo. II. c. 8 (known as Sir John Barnard's Act) required a stockbroker to keep a book called the broker's book, to enter all contracts for stock made by him on the same day, with the names of the parties and the day, and to produce such book when lawfully required; but this Act has been repealed by 23 Vict. c. 28. See BROKER.

Stock certificates. By the National Debt Act, 1870 (33 & 34 Vict. c. 71), it is provided that a holder of British Government stock may obtain a stock certificate; that is to say, a certificate of title to his stock or any part thereof, with coupons annexed, entitling the bearer of the coupons to the dividends on the stock (s. 26); that a certificate shall not be issued in respect of any sum of stock not being 50*l.*, or a multiple of 50*l.*, or exceeding 1000*l.*, (s. 28); that a trustee of stock shall not apply for or hold a stock certificate, unless authorised to do so by the terms of his trust (s. 29); that no notice of any trust in respect of any certificate or coupon shall be receivable (s. 30); that where a stock certificate is outstanding the stock represented thereby shall cease to be transferable in the Bank books (s. 31); that a stock certificate, unless a name is described thereon, shall entitle the bearer to the stock therein described, and shall be transferable by delivery (s. 32). The Act also contains many other provisions in regard to stock certificates, see ss. 33—42.

As to the forgery of stock certificates and transfers of stock, see 24 & 25 Vict. c. 98, and 33 & 34 Vict. c. 58; and as to the personation of owners of stock, etc., see the last-mentioned Acts.

Stock Exchange, a society of stockbrokers and stockjobbers. In the transaction of business they are governed by certain usages, and by rules framed by the Committee of the Stock Exchange. Also, the place where they meet to transact business. See BROKER.

Stock-in-trade, exempted from rating to the relief of the poor by 3 & 4 Vict. c. 89,—a temporary Act continued from time to time by successive 'Expiring Laws' Continuance' Acts.

Stockjobber, a dealer in stock; one who buys and sells stock on his own account on speculation.

Stockjobbing Act, 7 Geo. II. c. 8 (made perpetual by 10 Geo. II. c. 8), which was

repealed by 23 & 24 Vict. c. 28. See *Chitty on Contracts*, 11th ed., 650.

Stocks. Two boards each with semicircular holes, fitting together within posts, and padlocked down so as to confine the legs of a person just above the feet, anciently maintained at a public spot in every parish as a mode of ignominious confinement for petty offences, such as drunkenness, for which it was prescribed as a punishment in default of distress for a fine, by 21 Jac. I. c. 7, s. 4 (not repealed until 1872 by the Licensing Act of that year). The punishment of the stocks began to be disused about the beginning of the nineteenth century, but has not been expressly abolished; and stocks are still to be seen in some country villages and towns; e.g., in the Town Hall of Much Wenlock in Shropshire.

Stop order, if any person entitled, in expectancy or otherwise, to any share of any stocks or funds, standing in the name of the Paymaster-General (formerly the Accountant-General of the Court of Chancery, see 35 & 36 Vict. c. 44) to the general credit of any cause, or to the account of any class or classes of persons, assign his interest in such stock or funds, the assignee (although not a party to the cause in which the fund is standing) may present a petition for a stop order to prevent the transfer or payment of such stock or funds, or any part thereof, without notice to him. And a person having a lien on a fund in court may obtain a stop order. And see R. S. C. 1883, Ord. XLVI.

Stoppage, compensation or set-off.—*Civ. Law.*

Stoppage in transitu. An unpaid vendor may, in case of the vendee's insolvency, stop the goods sold, *in transitu*; but this right may be defeated by negotiating the bill of lading with a *bonâ fide* indorsee. The right of an allowed vendor to stop *in transitu* is to prevent the injustice which would take place if, in consequence of the vendee's insolvency, while the price of the goods was unpaid, they were to be applied in satisfaction of his liabilities, and so the property of one man disposed of in payment of the debts of another. This stoppage is not a rescission of the contract, but merely replaces the vendor in the same position as if he had not parted with the goods; hence the vendor's right of lien on the part stopped is re-vested and no more. Stoppage *in transitu*, as its name imports, can only take place while the goods are on the way; if they once arrive at their journey's end, and come into the actual or constructive possession of the consignee, there is an end of the vendor's right. Therefore, in most of the cases, the dispute has been whether the goods had arrived at the end of their journey. The rule to be recollected is, that they are *in transitu* as long as they are in the hands of the carrier as such, whether he was or was not appointed by the consignee; and, also, so long as they remain in any place of deposit connected with their transmission. But that, if after their arrival at their place of destination, they be warehoused with the carrier whose store the vendor uses as his own, or even if they be warehoused with the vendor himself, and rent be paid to him for them, that puts an end to the right to stop *in transitu*. See *Lickbarrow* v. *Mason*, 6 *East* 21; 1 *Smi. L. C.*; *Houston on Stoppage in Transitu.*

Stores, the supplies of different articles provided for the subsistence and accommodation of a ship's crew and passengers. As to Public Stores, see that title.

Stouthrieff, forcible depredation within or near a dwelling house.—*Bell's Scotch Law Dict.*

Stowage, money paid for a room where goods are laid; housage; the mode of lading a ship. See *Stevens on Stowage.*

Stowe [Sax.], properly a bank of a river; a place.—*Co. Litt.* 4 *b.* See STETHE. Also a village.—*Domesday.*

Stradling v. Stiles. A burlesque report of an argument in banco, published in Martinus Scriblerius' works. It is, in part, the work of Fortescue, an eminent lawyer who subsequently became a Baron of the Exchequer.

Straits Settlements. See 29 & 30 Vict. c. 115, and 37 & 38 Vict. c. 38.

Stramineus homo, a man of straw, one of no substance, put forward as bail or surety.

Stranding, the running of a ship on shore or on a beach. By reason of the memorandum always inserted in policies of insurance (see INSURANCE), it is of the greatest importance to define what is a stranding. On this much diversity of opinion has been entertained. It would appear that merely striking against a rock, bank, or shore is not a stranding; the ship must be upon the rock, etc., for some time.

Stratocracy [fr. στρατός, Gk., an army; and κράτος, power], a military government.

Strator or **Stretward,** a surveyor of the highways.—*Mon. Angl.* tom. 2, p. 187.

Straw, man of, a man of no substance. A transfer of shares in a company to such a man is good, so as to relieve the transferor from liability to pay calls upon the shares, if the transferee be *sui juris* and there be no resulting trust for the transferor (see *De Pass's case*, 4 *De G. & J.* 544), and unless the Stannaries Act, 1869, s. 35, applies. Likewise the

assignee of a lease may escape liability on the covenants by 'assigning over' to a man of straw.

Street Music (Metropolitan) Act. 27 & 28 Vict. c. 55, repealing 2 & 3 Vict. c. 47, s. 57.

Strict Settlement. This limits an estate to the use of the husband for life, remainder to trustees to support contingent remainders, remainder to the wife for life, remainder to other trustees for raising portions for younger children, remainder to the first and other sons tail-male, remainder to the daughters, in as tenants-in-common, with cross-remainders between them, remainder to the husband in fee. The usual course with conveyancers, where property of the wife is settled, is to confer on the wife a power of appointment, in the event of there being no issue, so as to give her the option of defeating the limitations of her estate. The object of a strict settlement is to put it out of the power of parents to deal with the corpus of an estate to the prejudice of their issue.

Strictissimi juris [Lat.] (*of the most strict law*).

Strictum jus [Lat.] (*mere law in contradiction to equity*).

Striking off the roll. Removing the name of a solicitor from the rolls of the court, and thereby disentitling him to practise. This is done ordinarily for gross misconduct, but sometimes at the solicitor's own request.

Striking-out Defence. This may now be done as a punishment for default in making discovery or allowing inspection after an order to do so. See R. S. C. 1883, Ord. XXXI., r. 21.

Strumpet [*meretrix*, Lat.], a whore, harlot, or courtesan. This word was anciently used for an addition; it occurs to the name of a woman in a return made by a jury in the sixth year of Henry V.

Stupration [fr. *stupro*, Lat.], rape, violation.

Stuprum, every union of the sexes forbidden by morality.—*Civ. Law.*

Sturgeon, a royal fish, which, when either throw ashore or caught near the coast, is the property of the sovereign.—2 *Steph. Com.*

Sturges Bourne's Act. The Select Vestry Act, 59 Geo. III. c. 12, by which the inhabitants of any parish in vestry assembled, were enabled to commit the management of its poor to a committee of the parishioners appointed for that purpose and called a select vestry, to whose orders the overseers were bound to conform.

Style (*v.*), to call, name, or entitle one; (*n.s.*) the title or appellation of a person. See also OLD and NEW STYLE, and CALENDAR and NEW YEAR'S DAY.

Suable, that may be sued.

Subah, a province such as Bengal. A ground division of a country, which is again divided into *circars*, *chucklas*, *pergunnahs*, and *villages*.—*Indian.*

Subahdar, the holder of the subah, the overnor or viceroy.—*Ibid.*

Subahdary, the office or jurisdiction of a subahdar.—*Ibid.*

Sub-bois. Coppice-wood.—2 *Inst.* 642. See SYLVA CÆDUA.

Subinfeudation, where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downward *in infinitum* till they were stopped by legislative provisions. See TENURE.

Subject (logic), that concerning which the affirmation in a proposition is made; the first word in a proposition.—*Mill's Logic.* See PREDICATE.

Subjects, the members of a commonwealth under a sovereign.

Sublatâ causâ tollitur effectus. Co. Litt. 303.—(The cause being removed, the effect ceases.)

Sublato fundamento cadit opus. Jenk. Cent. 106.—(The foundation being removed, the superstructure falls.)

Sublato principali tollitur adjunctum. Co. Litt.—(The principal being taken away, its adjunct is also taken away.)

Submission to arbitration. See ARBITRATION.

Submit, to propound, as an advocate, a proposition for the approval of the Court.

Sub-modo, under condition or restriction.

Subnervare, to ham-string by cutting the sinews of the legs and thighs.

It was an old custom *meretrices et impudicas mulieres subnervare.*

Subordinate clause. See CO-ORDINATE.

Subnotation, a rescript, which see.

Suborn (*v.a.*), see next title.

Subornation, the crime of procuring another to do a bad action. See PERJURY.

Subpœna [fr. *sub*, Lat., under, and *pœna*, penalty], a writ commanding attendance in a court under a penalty. It bears a close analogy to the citation, or *vocatio in jus* of the civil and canon laws. There are several kinds of subpœna.

At Common Law there are two to compel the attendance of witnesses:—

(1) *Subpœna ad testificandum*, the common *subpœna*, which is personally served upon a witness, in order to compel him to attend the trial or inquiry, to give evidence.

(2) *Subpœna duces tecum*: this is personally served upon a person, who has in his

possession any written instrument, etc., the production of which in evidence is desired. See DUCES TECUM.

These subpœnas are also used in *criminal* proceedings; four witnesses can be included in one subpœna, whether in civil or criminal cases.

For rules as to service, etc., of subpœna, see R. S. C. 1883, Ord. XXXVII., Rules 26—34, and for the different forms of subpœna, see APPENDIX J. of R. S. C. 1883.

Subpœna office in Chancery, abolished, and its duties transferred to Clerks of Records and Writs.—15 & 16 *Vict.* c. 87, s. 28.

Sub pede sigilli [Lat.], (*under the foot of the seal*).

Subreption, the obtaining a gift from the Crown by concealing what is true.

Subrogation, substitution.

Subsequens matrimonium tollit peccatum præcedens. Reg. Jur. Civ.—(A subsequent marriage removes a previous criminality.) See LEGITIMATION.

Subsequent condition. See CONDITION SUBSEQUENT.

Subsidy, an aid, tax, or tribute granted to the Crown for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

Sub silentio, in silence.

Substituted Executor, one appointed to act in the place of another executor upon the happening of a certain event, e.g., if the latter should refuse the office.

Substituted Service, of a writ of summons, service on some person representing the defendant, instead of on the defendant personally. See R. S. C. 1883, Ord. X.

Substitution. In the civil law a conditional appointment of a *hæres.* For its three kinds, see *Cum. C. L.* 143; *Sand. Just.*, 7th ed., 197, 200, 201.

In the Scotch law, the enumeration or designation of the heirs in a settlement of property. Substitutes in an entail are those heirs who are appointed in succession on failure of others.

Subtraction, neglecting or refusing to perform any suit, service, custom, or duty, or to pay rent, service, tolls, etc.—3 *Bl. Com.* 230.

Suburbani, husbandmen.

Succession, the power or right of coming to the inheritance of ancestors. See CANONS OF INHERITANCE; DISTRIBUTION.

Succession Duties. The Succession Duties Act, 1853, 16 & 17 Vict. c. 51 (which came into operation on May 19th, 1853), amended by 22 & 23 Vict. c. 21, ss. 12—15, and by the Customs and Inland Revenue Acts, 1888 and 1889, newly imposed a set of duties, varying in amount from 1 per cent. in the case of a child succeeding a parent to 10 per cent. in the case of succession to a stranger in blood, upon real or personal property to which any person succeeds on the death of another. The duty is calculated on the capitalised value for the life of the successor of the property succeeded to, in accordance with a table scheduled to the Act of 1853; e.g., if a person aged 50 succeed to property worth 100*l.* a year, he pays succession duty upon 1242*l.* 19*s.* 6*d.*

The Act of 1888 imposes an additional duty of 10*s.* per cent. where the successor is the lineal issue or ancestor of the predecessor, and of 1*l.* 10*s.* per cent. in other cases.

The Act of 1889 (s. 12) exempts purchasers and mortgagees from liability to succession duties, after the expiration of six years from certain notices to the Commissioners of Inland Revenue.

The Acts apply to both personal and real property, but one of the principal changes effected by the Act of 1853 was that probate property became for the first time dutiable upon a succession after death, as no probate duty was or is payable in respect of it. See *Hanson on Legacy and Succession Duties*, and *Trevor on Succession Duties*; and 24 & 25 Vict. c. 92, and 28 & 29 Vict. c. 104, ss. 53—64.

Successor, one that follows in the place of another. The correlative of predecessor in 16 & 17 Vict. c. 51.

Succurritur minori: facilis est lapsus juventutis. Jenk. Cent. 47.—(A minor is assisted: a mistake of youth is easy.)

Sucken, the whole lands astricted to a mill, the tenants of which are bound to grind there.—*Bell's Scotch Law Dict.*

Sudbury borough, disfranchised by 7 & 8 Vict. c. 53.

Sudder, the best; the fore-court of a house; the chief seat of government contradistinguished from *mofussil,* or interior of the country; the presidency.—*Indian.*

Sudder Dewanny Adawlut, the chief civil court of justice held at the presidency.—*Ibid.*

Sudder Miaamut Adawlut, the chief criminal court of justice.—*Ibid.*

Sue, to prosecute by law, to claim a civil right by means of legal procedure.

Suez Canal. By agreement ratified by the Suez Canal Shares Act, 1876, 176,602 shares in the Suez Canal Company were acquired by the Crown by purchase from the Khedive of Egypt for about 4,000,000*l.* sterling.

Sufferance, Tenancy at. This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only. It arises when a person,

after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus if A. is a tenant for years, and his term expires, or is tenant at will, and his lessor dies, and he continues in possession without the disagreement of the person who is entitled to the same, in the one and the other of these cases he is said to have the possession by sufferance—that is, merely by permission or indulgence, without any right: the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate, or by the permission of the owner of the land, till it is proved that the possession is held in opposition to the will of that person.

An under-tenant, who is in possession at the determination of the original lease, and is permitted by the reversioner to hold over, is a *quasi* tenant at sufferance.

Lord Coke tells us (in 2 *Inst.* 134) this diversity is to be observed, that where a man cometh to a particular estate *by the act of the party*, there, if he hold over, he is a tenant at sufferance; but where he cometh to the particular estate *by act of law*, as a guardian, for instance, there, if he hold over, he is no tenant at sufferance, but an abator. The same doctrine is laid down in 1 *Inst.* 271.

This tenancy is created only by construction of law, and cannot originate in the agreement of the parties. For the agreement of the parties would pass either an estate at will, or from year to year, according to the interest of the parties. There exists no privity between the tenant at sufferance (who has but a mere possession, without privity) and the person entitled to the possession; yet such occupancy is not adverse to the title of the person who possesses the right of entry, unless he choose to consider it so; but an adverse possession will take place on an entry and perception of the profits of the land by a person, without the reversioner's consent, after the death of a tenant at sufferance. This estate cannot be the subject of conveyance or transfer.

Since *laches* or neglect can never be imputed to the sovereign, a lessee of Crown lands, holding them over after the determination of his interest in them, is never considered a tenant by sufferance, but he is deemed a bailiff of his own wrong, and so accountable to the Crown, but after office found he becomes an absolute intruder.

This estate is put an end to whenever the true owner actually enters upon the lands, by which he declares the continuance of the tenant tortious and wrongful, or demands possession, or brings his action of ejectment to recover possession, which he may do without any previous demand. Prior to entry, an action of trespass cannot be maintained against the tenant, for his sufferance must be previously determined by entry, before this possessory action will lie.—*Woodfall's Land and Ten.*, 14th ed., 242.

Sufferance wharves are wharves on which goods may be landed before any duty is paid. They are appointed for the purpose by the commissioners of the customs.—16 & 17 *Vict.* c. 107, s. 13; 2 *Steph. Com.*

Sufferentia pagis, a grant or sufferance of peace or truce.—*Rot. Claus.*, 16 *Edw. III.*

Suffragan. Bishops are styled *suffragan*, a word signifying deputy, in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called suffragan bishops, and resemble the *chorepiscopi*, or bishops of the country in the early times of the Christian church. How this inferior order of bishops may be elected and consecrated for 25 towns therein specified (including Thetford, Grantham, and Gloucester), is regulated by 26 Hen. VIII. c. 14; but notwithstanding this statute, it was not, until very recent years, when the suffragans were appointed for a few of the specified towns, usual to appoint them. The Suffragans Nomination Act, 1888, however, empowers the Queen by Order in Council to add towns to those specified in the Act of Hen. VIII., and to change the sees of suffragans' appointed before the passing of the Act. No Order in Council under the Act has as yet (February 1892) appeared.

Suffragans should not be confounded with the *coadjutors* of a bishop, the latter being appointed, in case of a bishop's infirmity, to superintend his jurisdiction and temporalities, neither of which was within the interference of the former.—*Co. Litt.* by *Harg.* 94 (*a*), note (3).

Suffrage [fr. *suffragium*, the etymology is uncertain, for the opinions of those who connect it with *φράζεσθαι*, or *fragor*, do not deserve notice. Wunder thinks that it may possibly be allied with *suffrago*, and signified

originally an ankle-bone or knuckle-bone], vote; elective franchise; voice given in a controverted point; aid, assistance. See ELECTION.

Suggestio falsi [Lat., *a representation of untruth*], one of the branches of fraud. Consult *Addison on Torts*, 6th ed., 732 *et seq.*

Suggestion, a surmise or representing of a thing; an entry of a fact on the record.

Suicide. (1) Self-slaughter; (2) a self-slaughterer, commonly termed in law '*felo de se.*' See FELO DE SE.

Sui juris [Lat.] (*of his own right*). A person who is neither a minor nor insane, nor subject to any other disability, is said to be *sui juris.*

Suit, a following. It is used in divers senses:

(1) An action in the Supreme Court, or a proceeding by petition in the Divorce branch of that court; a prosecution; a petition to a Court, etc. See Jud. Act. 1873, s. 100.

(2) *Suit of court*, an attendance which a tenant owes to his lord's court.

(3) *Suit Covenant*, where one has covenanted to do suit and service in his lord's court.

(4) *Suit Custom*, where service is owed time out of mind.

(5) *Suithold*, a tenure in consideration of certain services to the superior lord.

(6) The following one in chase, as fresh suit.—*Cowel*, voce '*Suit.*'

Suiter, or **Suitor**, one that sues; a petitioner; a suppliant; a wooer.

Suitor Fee Fund, a fund in the Court of Chancery into which the fees of suitors in that court were paid, and out of which were defrayed the salaries of various officers of that court. See 15 & 16 Vict. c. 87.

Suit-silver, or **Suter-silver**, a small rent or sum of money paid in some manors to excuse the freeholders' appearance at the courts of their lord.—*Cowel.*

Sulh Ælmyssan, plough-arms.—*Anc. Inst. Eng.*

Sullery, a plough-land.—1 *Inst.* 5.

Sumage, toll for carriage on horseback.—*Cowel.*

Summa ratio [*lex*] *est, quæ pro religione facit.* 5 Co. 14.—(The highest law is that which supports religion.)

Summary, an abridgment, brief, compendium; also a short application to a Court or judge, without the formality of a full proceeding. See PLENARY.

Summary Jurisdiction. The jurisdiction of a court to give a judgment or make an order itself forthwith, e.g., to commit to prison for contempt, to punish mal-practice in a solicitor, or, in the case of justices of the peace, a jurisdiction to convict an offender themselves instead of committing him for trial by a jury. The mode of exercising this latter jurisdiction, which is given in *particular* instances by very numerous *particular* statutes, is *generally* regulated by the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43 (also called 'Jervis'' Act, from having been carried through parliament by Jervis, C. J., when Attorney-General), and the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49.

See *Chit. Stat.*, vol. 3., tit. '*Justices*,' and for the 'Summary Jurisdiction Rules, 1886,' see *Chit. Stat. for* 1886, p. 41.

Summary Jurisdiction, Court of, 'means' in an Act of Parliament 'any justice or justices of the peace, or other magistrate by whatever name called, to whom jurisdiction is given by, or who is authorised under the Summary Jurisdiction Acts.'—*Interpretation Act*, 1889, s. 13, subs. 11.

Summer-hus silver, a payment to the lords of the wood on the Wealds of Kent, who used to visit those places in summer, when their under-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money. *Custumale de Newington juxta Sittingburn, M.S.; Cowel.*

Summing up, a judge's exposition of evidence to a petty jury.

Summing up evidence. Upon the trial of any cause the addresses to the jury are regulated as follows:—The party who begins, or his counsel, is allowed (in the event of his opponent not announcing, at the close of the case of the party who begins, his intention to adduce evidence) to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, is allowed to open the case, and also to sum up the evidence (if any); the right to reply is as before.—*C. L. P. Act*, 1854, s. 18. The same rule now extends to criminal trials. See DENMAN'S ACT.

Summoneas, a writ-judicial of great diversity, according to the divers cases wherein it was used. Obsolete.

Summoners, petty officers, who cite and warn persons to appear in any court.—*Fleta*, l. 9.

Summonitiones aut citationes nullæ liceant fieri intra palatium regis. 3 Inst. 141.—(Let no summonses or citations be served within the king's palace.) See *Att.-Gen.* v. *Dakin*, 37 *L. J. Ex.* 150, and 39 *L. J. Ex.* 113.

Summonitores Scaccarii, officers who assisted in collecting the revenues by citing the defaulters therein into the Court of Exchequer.

Summons [fr. the writ called *summoneas.*—

Pegge's Anecd. of the Engl. Lang., 2nd ed., 173], a call of authority, admonition to appear in court, a citation.

'Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.'—*R. S. C.* 1883, Ord. II., r. 1.

Summonses in judges' or masters' chambers are the means by which one party brings the other before a judge (or a master) to settle matters of detail in the procedure of a suit; as, for time to plead, to modify pleadings when inconvenient, to require security for costs, to change the venue, etc., etc. There is an appeal from the decision of a master to the judge, and from the judge's decision to the court.

Summum jus, summa injuria. Summa lex, summa crux.—Hob. 125. (Extreme law is extreme injury. Strict law is strict punishment.)

Sumner, or **Sompnour**, one who cites or summonses.—*Cowel.*

Sumptuary laws, those in restraint of luxury, excess in apparel, etc.; they are all repealed by 1 Jac. I. c. 25.—3 *Hall's Mid. Ages*, c. 9, pt. 2, p. 343.

Sunday [fr. *sunnan daeg*, Sax., the day of the sun], the first day of the week, the Lord's day, termed in 29 Car. II. c. 7, *infra*, 'the Lord's Day, commonly called Sunday.' It is a *dies non juridicus*, but an arrest for crime can be effected on this day; and bail can arrest their principal, and a serjeant-at-arms can apprehend; but no other law proceedings can be taken. By 29 Car. II. c. 7, it is enacted that 'no tradesmen, artificers, workmen, labourers, or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted). By 'The Sunday Observation Prosecution Act, 1871' (34 & 35 Vict. c. 87), —a temporary Act, continued from time to time by successive 'Expiring Laws' Continuance' Acts,—it is provided that prosecutions for offences under the Act of Charles II. shall only be commenced by the chief officer of police, or with the consent of two justices of the peace, or a stipendiary magistrate; and no such prosecution shall be heard before the justices of the peace or stipendiary magistrate by whom or with whose consent the same has been instituted. Sunday entertainments open to the public for money are forbidden under heavy penalties by 21 Geo. III. c. 49 (as to which see *Warner* v. *Brighton Aquarium Co.*, *L. R.* 10 *Ex.* 291), amended by 38 and 39 Vict. c. 80, which allows the Crown to remit the penalties.

As to the sale of liquors on Sundays, see SIX DAY LICENSE. The Factory and Workshop Act, 1878, prohibits Sunday employment, with an exemption for Jews.

By R. S. C. 1883, Ord. LXIV., where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas-day, and Good Friday are not to be reckoned in the computation of such limited time (r. 2).

Sunday Schools are exempted from poor and other rates by the 32 & 33 Vict. c. 40, s. 1.

Sunnud, a prop or support, a patent, charter, or written authority, for holding either land or office.—*Indian.*

Sunrise. In *Tutton* v. *Darke*, 5 *H. & N.* 647, the question will be found raised whether the time of sunrise is to be reckoned from the first appearance of the beams of the sun above the horizon, or from the time when the entire sun has emerged.

Super altum mare [Lat.] (*upon the high sea*).

Superannuation Acts, for pensioning the civil servants of the Crown; 4 & 5 Wm. IV. c. 24; 20 & 21 Vict. c. 37; 22 Vict. c. 26; 23 & 24 Vict. c. 89; 25 & 26 Vict. c. 73; 29 & 30 Vict. c. 68; 32 & 33 Vict. c. 43; 35 & 36 Vict. c. 12; and 36 & 37 Vict. c. 23.

The principal Act is the Superannuation Act, 1859, 22 Vict. c. 26, which fixes the scale of pension at $\frac{10}{60}$ths of the annual salary on retirement after ten years' service, and gives an additional $\frac{1}{60}$th for every additional year of service up to the fortieth year. See also PENSION.

Supercargo, an officer in a ship, whose business is to manage the trade. A person employed by commercial companies or private merchants, to take charge of the cargoes exported, to sell them abroad to the best advantage, and to purchase proper commodities to re-lade the ship homewards. He goes out and returns home with the ship, thus differing from factors, who have a fixed residence.

Superficiarius, a builder upon another's land under a contract.—*Civ. Law.*

Superficies, the alienation by the owner of the surface of the soil of all rights necessary for building on the surface, a yearly rent being generally reserved; also a building or erection.—*Sand. Just.*, 7th. ed., 135.

Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum. Co. Litt. 6.—(The truth of charters is neces-

sarily to be referred to a jury, when the witnesses are dead.)

Superflua non nocent. Jenk. Cent. 184.—(Superfluities hurt not.)

Superfluous Lands, lands acquired by a public company under the Lands Clauses Act, 1845, 8 Vict. c. 18, but not required for the purposes of the undertaking of the company. Such lands must, by s. 127 of the Act, be sold within ten years after the limit limited for the completion of the undertaking, and, if not so sold, become the absolute property of the adjoining owners, and the person entitled to the lands from which they were originally severed, or, if they refuse, the adjoining owners have a right of pre-emption, within the ten years. The law of this subject has given rise to much litigation, the leading case being *Great Western Railway Company* v. *May*, *L. R.* 7 *H. L.* 283.

Super-institution, the institution of one in an office to which another has been previously instituted; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted and instituted on the title or presentment of another.—2 *Cro.* 463.

A church being full by institution, if a second institution is granted to the same church this is a super-institution; concerning which two things have been resolved:—

(1) That the super-institution, as such, is properly triable in the spiritual court; (2) that it is not triable there, in case induction has been given upon the first institution.

The advantage of a super-institution is, that it enables the party who obtains it to try his title by ejectment, without putting him to his *quare impedit*; but many inconveniences thence following (e.g., the uncertainty to whom tithes shall be paid, and the like), this method has been discouraged.—*Mirehouse on Advowsons*, 189.

Superintendent Registrar, an officer who superintends the registers of births, deaths, and marriages. There is one in every poor law union in England and Wales. The office is filled as of right by the clerk to the guardians of the union, if he is duly qualified, and accepts it. He is under the Registrar-General. See 6 & 7 Wm. IV. c. 86; and 15 & 16 Vict. c. 25.

Superintending Constables, or **Superintendents,** those who have the charge of lock-up houses, etc.—13 & 14 *Vict.* c. 20, s. 6.

Superior, the grantor of a feudal right to be held of himself. See *Bell's Scotch Law Dict.*

Superior Courts, the Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer, at Westminster, were so called. See these courts treated of under the proper titles; and see titles HIGH COURT OF JUSTICE, and SUPREME COURT OF JUDICATURE.

Super-jurare, a term anciently used when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses.

Superoneratione pasturæ, a judicial writ that lay against him who was impleaded in the county court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts. Obsolete.

Super prærogativâ regis, a writ which formerly lay against the king's tenant's widow for marrying without the royal license.—*F. N. B.* 174.

Supersedeas, a writ that lay in a great many cases; and signified in general a command, on good cause shown, to stay some ordinary proceedings which ought otherwise to proceed.—*F. N. B.* 236.

Super statuto, 1 Edw. III. c. 12, a writ that lay against the king's tenant holding in chief, who aliened the king's land without his license.

Super statuto de articulis cleri, a writ which lay against a sheriff or other officer who distrained in the king's highway, or on lands anciently belonging to the church.

Super statuto facto pour seneschal et marshal de roy, etc., a writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made or arising within the king's household.

Super statuto versus servantes et laboratores, a writ which lay against him who kept any servants who had left the service of another contrary to law.

Superstitious uses. See CHARITIES.

Supervisor, a surveyor or overseer.

Super visum corporis [Lat.] (*upon view of the corpse*). A coroner's inquest must generally be so held; but the Coroners Act, 1887, allows a view to be dispensed with on a second inquest.

Supplemental answer, one which was filed in Chancery for the purpose of correcting, adding to, and explaining an answer already filed.—*Smi. Ch. Pr.* 334. See now STATEMENT OF DEFENCE.

Supplemental bill, an addition to an original bill in equity, in order to supply some defect in its original frame and structure. Facts occurring subsequently to the filing of an original bill might be added by amendment or supplemental statement.—15 & 16 *Vict.* c. 86, s. 53; *Consol. Ord.* 1860, xxxii., r. 2; *Smi. Ch. Pr.* 737; 2 *Dan. Ch. Pr.* 5th ed.,

1396—1401. See now BILL IN CHANCERY and STATEMENT OF CLAIM.

Supplemental bill, Bill in the nature of a. This bill and the above-named bill were usually confounded together; but a prominent distinction between them seems to have been that a supplemental bill was properly applicable to those cases only where the same parties and the same interest remained before the Court; whereas an original bill, in the nature of a supplemental bill, was properly applicable when new parties with new interests, arising from events which have happened since the institution of the suit, were brought before the Court.—*Story's Eq. Plead.* 265; 2 *Dan. Chan. Pr.* 5th ed., 1396—1401.

Supplemental claim, a further claim which was filed when further relief was sought after the bringing of a claim.—*Smi. Ch. Pr.* 655.

Suppletory oath, the oath of a litigant party in the spiritual and civil-law courts.

Suppliant, *the actor in,* or party preferring, a petition of right. See PETITION DE DROIT.

Supplicavit, a writ which issued out of Chancery for taking surety of the peace, upon articles filed on oath, when one was in danger of being hurt in his body by another; it was addressed to the justices of the peace and sheriff of the county, and was grounded upon the 1 Edw. III. st. 2, c. 16, which ordained that certain persons should be appointed by the chancellor to take care of the peace, etc. —*F. N. B.* 80.

This writ has been of late years seldom used, for when application has been made to the Superior Courts, they have usually taken the recognizances there, under the 21 Jac. I. c. 8.

Supplicium, any corporal punishment; it included death.—*Civ. Law.*

Supply, Commissioners of, persons appointed to levy the land tax in Scotland, and to cause a valuation roll to be annually made up, and to perform other duties in their respective counties. See 19 & 20 Vict. c. 93; and *Bell's Scotch Law Dict.*

Supply, Committee of. All bills which relate to the public income or expenditure must originate with the House of Commons, and all bills authorising expenditure of the public money are based upon resolutions moved in a Committee of Supply, which is always a committee of the whole House.

Support (*v. a.*), to support a rule or order is to argue in answer to the arguments of the party who has shown cause against a rule or order nisi.

Support (*n. s.*), the help which every landowner receives at the boundary of his land from his neighbour's land which lies close to his, and prevents its falling in and crumbling away, as it would do if his neighbour dug away the surface of his land to the very edge.—*Goddard on Easements*; and as to right of support for buildings, see *Dalton* v. *Angus*, 6 *App. Cas.* 740, in which it was held by the House of Lords, in the year 1881, that a right to lateral support for a building is acquired by twenty years' uninterrupted, peaceable, and open enjoyment of that building.

Suppressio veri [Lat.] (*a suppression of truth*), one of the classes of fraud. Consult *Addison on Torts*, 6th ed.

Supra, above, or after. This word occurring by itself in a book refers the reader to a previous part of the book, like *ante*.

Supra protest, after 'protest' (see PROTEST). There may be either acceptance or payment of a bill of exchange by a person other than the drawee or acceptor or other person liable, after it has been protested for non-acceptance or non-payment. The full term is 'acceptance (*or* payment) supra protest for honour,' i.e., for the honour or in relief of the person liable. The rights and liabilities of the parties are regulated by the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61, ss. 65—8, and see *Byles on Bills*, chrs. 20, 21.

Supremacy, sovereign dominion, authority, and pre-eminence.

Supremacy, Act of, 1 Eliz. c. 1.

Supremacy, Oath of, to uphold the supreme power of the kingdom in the person of the reigning sovereign. See now the Promissory Oaths Act, 1868, and title OATH.

Suprema potestas seipsam dissolvere potest. Bacon.—(Supreme power can dissolve itself.)

Supreme Court of Judicature. By the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 3 & 4 (amended by Jud. Act, 1875, s. 9), it was enacted that from the commencement of that Act (November 1st, 1875; see Judicature Act, 1875, 38 & 39 Vict. c. 77, s. 2), the Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court for Divorce and Matrimonial Causes, should be united and consolidated together, and should constitute one Supreme Court of Judicature in England; the said Supreme Court to consist of two permanent Divisions, being, 'Her Majesty's High Court of Justice,' and 'Her Majesty's Court of Appeal.'

See further HIGH COURT OF JUSTICE and COURT OF APPEAL.

The Supreme Court of Judicature Acts, 1873 & 1875, 36 & 37 Vict. c. 66, and 38 & 39

Vict. c. 77, are commonly referred to as 'The Judicature Acts,' and are herein cited as 'Jud. Act, 1873,' and 'Jud. Act, 1875.'

The following are the more important provisions of these Acts, in addition to those constituting the High Court and Court of Appeal:—The High Court was divided into five divisions, representing the Courts whose jurisdiction was transferred thereto (see DIVISIONS); the Court of Appeal received jurisdiction to hear, with a few specified exceptions, appeals from any judgments or order of the High Court; power was given to each Division to administer law and equity concurrently, with preference for the rules of equity, where they should be found to be in conflict with the rules of law; district registries were established in various parts of the country for the transaction of litigious business up to actual trial; counter-claims, and the power of a defendant to bring in 'third parties,' were introduced; new rules of pleading, intended to combine the brevity of the common law system with the specific character of equity drafting, were substituted for those previously existing; special power was given under 'Order XIV.' to a plaintiff to sign judgment for a liquidated demand unless the defendant could obtain leave to defend; four 'official referees,' with power to report to the Court upon questions of fact, were appointed; and the Chancery practice of leaving costs (which at common law 'followed the event' of an action) was adopted for all the branches of the High Court.

The Act of 1875 contained a very lengthy schedule of Rules of Practice, taken, with many alterations and additions, from the Common Law and Equity Procedure Acts, the spirit of the two Acts being to adopt for the one new practice what was best in the two old ones. These Rules, which had been much amended from time to time, were consolidated, with further amendments in 1883, by the 'Rules of the Supreme Court, 1883,' abbreviated 'R. S. C. 1883.'

Supreme power, the highest authority in a state, all other powers in it being inferior thereto. See 2 *Ruth. Nat. Laws*, b. 2, c. 4, p. 67.

Surcharge, an overcharge of what is just and right; exceeding one's powers or privileges; also a second or further mortgage.

Surcharge and falsify, a mode of taking accounts in Chancery.

A surcharge is applied to the balance of the whole account, and supposes credits to be omitted which ought to be allowed. A falsification applies to a wrong charge in the debits, and supposes that the item is wholly, or in some part, false or erroneous.—2 *Ves.* 265.

Sur cui in vitâ. See CUI IN VITA.

Sur disclaimer, Writ of right of, abolished by 3 & 4 Wm. IV. c. 27.

Surety, hostage, bondsman, one that gives security for another, one that is bound for another. A surety who discharges the liability of the principal debtor is entitled to an assignment of all the securities held by the creditor.—19 & 20 *Vict.* c. 97, s. 5. See SECURITY.

Surgeon [corrupted fr. *chirurgeon*], is properly one who cures diseases or injuries by manual operation. See MEDICAL ACT and PHYSICIAN.

The Royal College of Surgeons in England was incorporated by charter of the 14th Sept. in the 7th year of Queen Victoria. It had, however, been previously incorporated.

As to the power of the college to make bye-laws, see 38 & 39 Vict. c. 43.

Surgeon of the Queen's Prison, used to be appointed by the Home Secretary during pleasure.—5 & 6 *Vict.* c. 22. See QUEEN'S PRISON.

Surname [fr. *surnom*, Fr. It is a great dispute whether he should write *surname* or *sirname*; on the one hand, there are a thousand instances in court rolls and other ancient muniments, where the description of the person is written *over* the Christian name, this only being inserted in the line; and the French always write *surnom*. There is, however, no impropriety to say *sirname*, since these additions are so apparently taken from our *sires* or fathers], the family name; the names over and above the Christian name.—*Encyc. Lond.* That part of a name which is not given in baptism; the last name; the name common to all members of a family. Surnames were originally acquired by accident and retained by custom. They may be changed in the same manner, or by Royal license from the Heralds' office. As to the surname of a divorced woman, see DIVORCE. A bastard can have a surname by custom or grant only. See NAME.

Surplice fees, fees payable on ministerial offices of the Church, such as baptisms, funerals, marriages, etc.—*Steph. Com.*, 7th ed., ii., 740; iii., 312.

Surplusagium non nocet. 9 H. 626.—(Surplusage hurts not.)

Surplus, Surplusage, a supernumerary part, an overplus, what remains when everything is satisfied.

Surprise. When the evidence produced by the one side is such as from the nature of the circumstances could not have been reasonably expected by the other side, and there is reason to believe that this evidence, if foreseen, might have been rebutted, contradicted, or explained,

the Court grants a new trial, on such conditions as to costs as seems fit. See also NONSUIT and TRIAL.

Surrebutter. This was the last pleading bearing a name at Common Law; a plaintiff's answer to a defendant's rebutter. See now PLEADING and REJOINDER.

Surrejoinder, an answer to a rejoinder; a pleading by the defendant. See now PLEADING and REJOINDER.

Surrender [fr. *sursum redditio*], an assurance restoring or yielding up an estate, the operative verbs being 'surrender and yield up.' The term is usually applied to the giving up of a lease before the expiration of it.

The effect of a surrender is to pass and merge the estate of the surrenderor to, and into, that of the surrenderee.

By the combined operation of s. 3 of the Statute of Frauds, and 8 & 9 Vict. c. 106, s. 3, every express surrender must be in writing, and every express surrender of a more than three years' term must be by deed. But there may be an implied surrender, or, as it is called in the Statute of Frauds, a surrender 'by act and operation of law'—that is, as defined by *Phene* v. *Popplewell*, 12 *C. B. N. S.* 334, by anything which amounts to an agreement by the tenant to abandon and by the landlord to resume possession of the demised premises, e.g., by the delivery and acceptance of keys, by the entering of the parties into a new contract of tenancy, or by the landlord accepting a new tenant. See *Woodfall's Landlord and Tenant*, 14th ed., ch. 8, s. 3.

Surrender of Copyholds. Copyholds are not, as a general rule, alienable by any of the Common Law assurances. A surrender (which is *vocabulum artis*) is the yielding up of a legal tenancy in a copyhold estate, either by express words or operation of law, by the tenant after admittance, or by his lawfully appointed attorney, either in or out of court, to the lord of the manor in person, his chief steward, or under-steward; or, by special custom, to the bailiff, beadle, or reeve, or to certain tenants of the manor, either as a relinquishment or resignation of such estate, or as the medium of conveying or transferring it to another. Surrenders are made in various forms; in some manors by a rod, in others by a straw, in others by a glove, or some other symbol, which is delivered by the surrenderor to the steward, or other person taking the surrender or in the name of seisin. When a copyholder surrenders for a valuable consideration, the land is bound both at law and in equity, and he is prevented from surrendering to any other person, but the whole legal estate remains in him, and he has a right to retain the possession, subject to his accounting for the mesne profits should the surrenderee be afterwards admitted, and if the surrenderor die, the estate devolves upon his customary heir, but he is a trustee for the surrenderee. A surrender is not affected by the death of the parties, and the transfer may notwithstanding be completed.

Surrenders of copyholds are governed by the same rules as Common Law conveyances.

An equitable interest in copyholds is not the subject of surrender, except in the instance of a surrender for the purpose of barring an entail, but it is assignable. The assignee of an equitable estate, on taking a surrender from the person in whom the legal copyhold interest is vested, may compel an admission upon the payment of a single fine.

Surrender of fugitives. Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority. A fugitive who passes hither comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like; and cannot be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend, 'The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction.'—*Warrender* v. *Warrender*, 9 *Bligh*, 119. See EXTRADITION.

Surrenderee, Surrenderor, the persons to or by whom surrender is made.

Surreptitious, fraudulent, stealthy. For the difference between surreptitious and obreptitious fraud, see *Sanchez de Matrimonio.*

Surrey. As to the Assizes for this county, see ASSIZES, and see Jud. Act, 1875, s. 23.

Surrise, to forbear or neglect.—*Bract.* l. 5.

Surrogate, one that is substituted or appointed in the room of another, as by a bishop, chancellor, judge, etc., especially an officer appointed to dispense licenses to marry without banns.—2 *Steph. Com.*

By the Legal Practitioners Act, 1877, 40 and 41 Vict. c. 62, any surrogate, not being 'a qualified practitioner,' i.e., a barrister, solicitor, etc., who for a fee prepares papers on which to found a grant of probate, etc., is liable to a penalty under s. 12 of the Attorneys and Solicitors Act, 1874 (as to which, see SOLICITORS).

Sursumredditio [Lat.], a surrender.

Survey (Ordnance). See ORDNANCE SURVEY.

Surveyor, one who has the overseeing or care of another person's land or works. See

HIGHWAYS. As to county surveyors in Ireland, see 25 & 26 Vict. c. 106.

A court of surveyors was erected by 33 Hen. VIII. c. 39, for the benefit of the Crown.

Survivorship, the living of one of two or more persons after the death of the other or others. See PRESUMPTION OF SURVIVORSHIP and JOINT TENANCY.

Suspend, to forbid an attorney or solicitor or ecclesiastical person from practising for an interval of time.

Suspense, Suspension, a temporal stop or hanging up as it were of a right for a time; also a censure on ecclesiastical persons, during which they are forbidden to exercise their offices, or take the profits of their benefices.

Suspension, Pleas in, were those which showed some matter of temporary incapacity to proceed with the action or suit.—*Steph. on Plead.*, 7th ed., 45. See ABATEMENT.

Sus. per coll. On the trial of criminals, the usage is for the judge to sign the calendar or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. In the case of a capital felony, it is written opposite to the prisoner's name, 'Hanged by the neck'; formerly in the days of Latin and abbreviation, *sus. per coll.* for *suspendatur per collum.* —4 *Bl. Com.* c. 32.

Suthdure, the south door of a church, where canonical purgation was performed, and plaints, etc., were heard and determined.

Swarf-money, warth-money, or guard-money, paid in lieu of the service of castleward.—*Cowel.*

Swear (*v. a.*), to put on oath, to administer an oath to. See OATH.

Swearing, the act of declaring upon oath. Profane swearing and cursing is an offence against God and religion, punishable summarily by fine under 19 Geo. II. c. 21, of 1*s.* for every day-labourer, soldier, or seaman; 2*s.* for every other person under the degree of a gentleman; and 5*s.* for every person of or above the degree of a gentleman.

There is also a penalty of 40*s.* for profane language *in the streets*, by the Town Police Clauses Act, 1847, s. 28, and the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 12. See *R.* v. *Scott*, 4 *B. & S.* 368. See OATH; AFFIRMATION.

Swearing the Peace, showing to a judge that one has just cause to be afraid of another in consequence of his menaces, in order to get him bound to keep the peace.

Sweinmote, Court of, one of the forest-courts, which was anciently held before the verderors as judges, by the steward, thrice in every year, the sweins or freeholders within the forest composing the jury. The principal jurisdiction of this Court was first to inquire into the oppressions and grievances committed by the officers of the forests; and secondly, to receive and try presentments, certified from the court of attachments, against offenders in vert and venison.—4 *Inst.* 289.

Swimming Baths may be provided by local authorities under the Baths and Washhouses Act, 1878, 41 Vict. c. 18, in the same manner as ordinary baths. See BATHS AND WASHHOUSES.

Swoling of land, so much land as one's plough can till in a year; a hide of land.—*Cowel.*

Sworn brothers [*fratres jurati*, Lat.], persons who, by mutual oaths, covenant to share in each other's fortunes. See *Sedg. Edw. Conf.* c. 35.

Sworn Clerks in Chancery. These offices are abolished by 5 & 6 Vict. c. 103.

Syb and Som, peace and security.—*Termes de la Ley.*

Syllogism, the full logical form of a single argument. It consists of three propositions (two premises and the conclusion), and these contain three terms, of which the two occurring in the conclusion are brought together in the premises of being referred to a common class. Consult *Mill's Logic.*

Sylva cædua [*subbois*, Fr.], wood under twelve years' growth.—45 *Edw. III.* c. 23.

Symbolæography, the art or cunning rightly to form and make written instruments. It is either judicial or extra-judicial; the latter being wholly occupied with such instruments as concern matters not yet judicially in controversy, such as instruments of agreements or contracts, and testaments or last wills.

Symbolic delivery. See LIVERY OF SEISIN.

Symbolum animæ [Lat.], a mortuary, or soul-scot.

Symond's Inn, formerly an Inn of Chancery.

Synallagmatical, that which involves mutual and reciprocal obligations and duties.

Synchronize, to concur in time.

Syncopare, to cut short, or pronounce things so as not to be understood.—*Cowel.*

Syndic, an advocate or patron; a burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator, an assignee.—*Civ. Law.* See *In the Goods of Eliz. Darke* (*deceased*), 29 *L. J.* (*Prob. M. & A.*) 11 (1860).

Syngraph, a deed, bond, or writing, under the hands and seals of all the parties.—*Civ. Law.*

Synod, a meeting or assembly of ecclesiastical persons concerning religion; being the same thing, in Greek, as convocation in Latin.

There are four kinds:—

(1) A general or universal synod or council, where bishops of all nations meet.

(2) A national synod of the clergy of one nation only.

(3) A provincial synod, where ecclesiastical persons of a province only assemble, being now what is called the convocation.

(4) A diocesan synod, of those of one diocese.

A synod in Scotland is composed of three or more presbyteries.

Synodal, a tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at the Easter visitation. 25 Hen. VIII. c. 10.

Synodales testes, synods-men (corrupted into sidesmen), were the urban and rural deans, now the churchwardens. See SIDESMEN.

T.

T, every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. The practice is abolished.—7 & 8 *Geo. IV.* c. 27. See BENEFIT OF CLERGY.

Tabard [fr. *tabardum*, low Lat.], a short gown; a herald's coat; a surcoat.

Tabarder, one who wears a tabard or short gown; the name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford.—*Encyc. Lond.*

Tabellio, a Roman officer who reduced contracts and wills into proper form, and attested their execution.

Table rents, payments which used to be made to bishops, etc., reserved and appropriated to their table or housekeeping.

Tabula in naufragio [Lat.] (*a plank in a wreck*). See TACKING and ATTENDANT TERM.

Tabulæ nuptiales, a written record of a marriage; or the agreement as to the *dos*.—*Civ. Law.*

Tabularius, a notary.—*Civ. Law.*

Tacfree, exempt from rent, payments, etc.

Tacita quædam habentur pro expressis. 8 Co. 40.—(Things unexpressed are sometimes considered as expressed.)

Tacite relocation, a silent or understood reletting of premises after the expiration of a lease, upon the same terms, etc., as those of such lease.—*Scotch phrase.*

Tack, a lease or contract of location; also an addition, supplement; also cattle taken in by a tenant on agistment.

Tack duty, rent reserved upon a lease.

Tacking, the process by which a mortgagee may, by taking a further mortgage for a further advance upon the same property, defeat the equitable claims of a mesne incumbrancer, i.e., a person who has lent money on the property after the first but before the further mortgage. The tacking mortgagee gains this right by virtue of his legal title under the first mortgage, and by the operation of the rule that where the equities (as that under the second and third mortgage) are equal the law shall prevail. 'Tacking' must not be confounded with 'Consolidation.' See that title.

By the 37 & 38 Vict. c. 78, s. 7, tacking was abolished, but that section was in the next session repealed by the 38 & 39 Vict. c. 87, s. 129.

Tail [fr. *tailler*, Fr., to prune]. An estate-tail is a freehold of inheritance, limited to a person and the heirs of his body general or special, male or female, and is the creature of the Statute *de Donis*. The estate, if the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation, unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man.

In order to create an estate-tail by deed, the word 'heir' or 'heirs' must be used.—*White* v. *Collins*, *Comyns' Rep.* 289, 301; 2 *Prest. Est.* 475. In addition to this term, the deed must contain, either in direct terms or by reference, *words of procreation*, to describe the body from whom the heirs are to proceed, or the person by whom they are to be begotten.

In a will technical words of limitation are not necessary: thus a devise

To A. and his issue; or

To A. and his seed; or children; or sons; or

To A. and his heirs male; or

To A. and his heirs lawfully begotten; or

To A., and if he die before issue, or not having issue, or not having a son, then to another, will give estate-tail.

If a tenant-in-tail grant the fee-simple in the property to another person and his heirs, only a qualified or base fee will pass, commensurate with the estate-tail, capable, however, of being rendered absolute, by barring

the entail, but until then defeasible by the entry not only of the reversioner, or remainder-man, when he becomes entitled to enter into possession of the estate, but also of the issue-in-tail upon the death of the tenant-in-tail. It should be observed that an estate-tail cannot as such be conveyed to another.

This estate possesses the following incidents and privileges:—

(1) It is, like a fee-simple, subject to curtesy and dower (if not barred).

(2) The owner may commit all kinds of waste upon it without being impeachable for it, and so it is said may his grantee.—3 *Leon.* 121.

(3) It is liable to every kind of debt.

(4) It may be lost by escheat; by forfeiture for treason, or felony (but such forfeiture is now abolished by 33 & 34 Vict. c. 23); or by extinguishment.

(5) The owner, having an inheritable freehold, has a right to the title-deeds which equity will secure to him.

(6) Although a tenant-in-tail must generally keep down the interest, yet, having only a particular interest, he is not bound to pay off any charge or incumbrance affecting the estate; if, however, he do so, the presumption is that he meant to exonerate the estate (for he might, if he pleased, have acquired the fee-simple), unless he evince the contrary intention by taking an assignment of the incumbrance to a trustee in trust for himself, or by some other express act.

(7) The donee may grant leases for twenty-one years out of it, under the Settled Estates Act. (See SETTLED LAND.)

(8) This estate cannot be merged, surrendered, or extinguished by the accession of the fee-simple to the tenant-in-tail.

(9) The issue-in-tail is not bound to complete, either at law or in equity, any contract made by his ancestor as tenant-in-tail, since he claims from the original grantor, and not from his immediate ancestor. If, however, he do any act towards completing such a contract, equity will then compel its performance.

(10) Neither is such issue bound to pay off his ancestor's incumbrances, nor to keep down the interest thereon; but he is liable to Crown debts under 33 Hen. VIII. c. 39, s. 75.

(11) A tenant-in-tail may cut timber and dispose of it, without barring the entail; but if he sell the growing trees, the buyer must sever them during his life, otherwise the issue-in-tail will be entitled to them as part of the inheritance; and the buyer, though obliged to pay the purchase-money, will not then be allowed to sever them.

(12) If a tenant-in-tail grant estovers, or the vesture of his woods, to another, the grant determines with his death; for being a charge upon the inheritance, it necessarily ceases when his power is determined.

(13) It may be barred by the tenant-in-tail, though not by the issue-in-tail, under the 3 & 4 Wm. IV. c. 74; but the entail of offices or dignities cannot be barred.

Before the Statute *de donis conditionalibus* the donee could, after issue born, have alienated the land, whereby the issue would have been disinherited, and the donor deprived of his right of reversion. This being the case, the statute declared that the will of the donor should be observed; and that an estate granted to a man and the heirs of his body should descend to the issue (he not having power to alienate the estate), and that in default of issue, the land should revert to the donor, or his heirs. Estates-tail were thus made inalienable, and neither the issue nor the remainder-man could be barred. And many other inconvenient consequences were produced, which quickened the ingenuity of the judicature, until it produced, at length (in its efforts to recover the liberty of alienation), the complicated machinery of fines and recoveries. See FINE and RECOVERY.

The modes, then, of barring an estate-tail were two: viz., a fine, according to the statute-law (which was a compromise of a fictitious action), giving a base fee commensurate with the existence of the issue upon whom the estate-tail would (if unbarred) have devolved, and a recovery at the Common Law (which was a real action carried on to judgment), giving the fee-simple absolute. These were abolished by 3 & 4 Wm. IV. c. 74, an analysis of which is here attempted in consequence of its importance.

The 3 & 4 Wm. IV. c. 74, entitled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance,' which received the royal assent August 28th, 1833, abolished all the fictions, together with their cumbrous technicality (see RECOVERY), which had been invented by legal artifice and judicial contrivance in contravention of the unrepealed Statute *de Donis*, and what the legislature could not do, in the reign of our second Edward, by reason of the mighty power of the barons,—the great proprietors of the soil,—it effected in the reign of our late sovereign, viz., the virtual repeal of the Statute of Westminster 2, and the recognition of the right of barring estates-tail, prescribing and simplifying the mode of disposition.

The general enabling clause (s. 15) enacts,

that 'after December 31st, 1833, every *actual tenant-in-tail* (consult the glossary clause), whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate-tail which shall be vested in, or might be claimed by, or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect *after* the determination, or in defeasance of any such estate-tail; saving always the rights of all persons in respect of estates prior to the estate-tail in respect of which such disposition shall be made, and the rights of all other persons except those against whom such disposition is by this Act authorised to be made.

In order to provide a check to the barring of estates-tail, so as to prevent a son tenant-in-tail, upon attaining his majority, defeating a strict family settlement, against the wish of his father, the tenant for life, the legislature has introduced a reasonable but unaccountable agent, denominated '*the protector of the settlement*,' who is, in many respects, but not in all (as will presently be seen), analogous to the abolished '*tenant to the præcipe*, who was a more technical creature, and whose protection was both arbitrary and defective, besides being productive of numerous difficulties. The office of this novel conservative power (as it has been called) is to grant or withhold his consent, which is required to enable a tenant-in-tail *in remainder*, *expectant* on an estate of freehold, to bar as well his own issue as also those in remainder, to the same extent as might have been effected by a recovery. It is to be observed, that an expectant tenant-in-tail may bar his own issue *only*, under this Act, without the consent of the protector. See PROTECTOR OF THE SETTLEMENT.

We will now consider the clauses substituting more simple modes of assurance.

Every disposition of lands by a tenant-in-tail is to be effected by some one of the assurances evidenced by deed (*not* being a will or a contract either expressed or implied) used for the conveyance of fee-simple estates. If the tenant-in-tail be a *feme covert*, her husband's concurrence is necessary, and her deed must be duly acknowledged (s. 40).

The tenant-in-tail, then, for the purposes of this Act, is treated as having a *legal* estate of fee-simple in the land (no matter what his estate-tail may be), and he must, therefore, convey by one of those modes of assurance which the law has appropriated to the transfer of freehold interests. These modes of assurance are feoffment (at the Common Law), bargain and sale, covenant to stand seised, a release (under the Statute of Uses), or grant, which is the best mode of assurance, and which must be adopted, if the estate be incorporeal.

As to the protector's consent, it may either be given by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, executed either on, or at any time before the day on which the assurance is made, otherwise the consent will be void; if the protector consent by a distinct deed, such consent will be deemed absolute and unqualified, unless he refer to the particular assurance, and confine his consent to the disposition thereby made. His consent once given cannot be revoked. A married woman, being a protector, gives her consent in the same manner as if she were a *feme sole* (ss. 42, 43, 44, 45). See 2 *Br. & Had. Com.* 218.

Tail after possibility of issue extinct, Tenant in. This estate arises out of a special entail as to the parentage of the issue, when the express condition has become impossible by reason of death. Thus, if an estate be granted to husband and wife, and their issue male or female, if either of them die without issue, the survivor is tenant-in-tail after possibility of issue extinct; and even if there have been issue, yet if the issue die without issue, then the surviving parent is also such a tenant; and also if an estate be entailed upon a man and his issue from a particular wife, if she die without issue, the interest of the husband becomes reduced to a tenancy-in-tail after possibility of issue extinct. Only a donee in tail-special can become such a tenant, for if the entail be general, such a tenancy can never arise; for whilst he lives he may have issue, the law not admitting the impossibility of having children at any age. As an estate-tail is originally carved out of a fee-simple, so this estate is carved out of a special entail.

There may be tenant-in-tail after possibility, etc., of a remainder as well as of a possession. And thus, if a lease for life be made, remainder to husband and wife in special tail, and the husband die without issue, now is the wife tenant-in-tail after possibility, etc., of this remainder; and if the tenant for life surrender to her, as he may (an estate for one's own life being greater than an estate for the life of another), now she is tenant-in-tail after possibility, etc., in possession.—*Lewis Bowles's case*, 11 Co. 81 a.

This estate must be created by death; it cannot arise out of any arrangement of parties, but *ex dispositione legis*, and not *ex provisione hominis*; if, therefore, an estate be given to husband and wife, and the heirs of their bodies, should they afterwards be divorced *causâ præcontractûs vel consanguinitatis vel affinitatis*, their estate is converted into a joint estate for life, and not into a tenancy-in-tail after possibility of issue extinct, because their estate has been altered by their own act, and not by the act of God. Such a tenancy can endure only for the life of the surviving donee-in-tail, who has no power under the 3 & 4 Wm. IV. c. 74, s. 18, to bar the remainders or reversion over, and if he convey his interest to another, such other will be only a tenant *pur autre vie*, and will be punishable for waste.

The attributes of this estate are these:—

(1) The tenant is dispunishable for waste; he may, therefore, not only commit it, but also convert to his own use the property wasted. Equity, however, will restrain him from committing wilful waste.

(2) The estate is liable to forfeiture.

(3) It will merge in a fee-simple or fee-tail, immediately expectant thereon.

(4) The reversioner or remainder-man shall be received upon the tenant's default.

(5) An exchange with a tenant for life is good, the interest being deemed equal, and only differing in quality.

(6) It is deemed a life estate only for the purposes of the 19 & 20 Vict. c. 120, s. 1.

Tailage [fr. *tailler*, Fr.], a piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax.—*Cowel.*

Taille, the fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver, cut or divided from all other, and tied to the issue of the donee—in short, an estate-tail. See TAIL.

Tailzie, or **Entail**, an arbitrary line of succession laid down by a proprietor, in substitution of a legal line of succession.—*Scotch term.* A deed of tailzie creates a Scotch entail by which, until 11 & 12 Vict. c. 36, 16 & 17 Vict. c. 94, and 31 & 32 Vict. c. 84, an estate might be tied up for ever. See also 38 & 39 Vict. c. 61.

Tales de circumstantibus. If a sufficient number of jurors do not appear upon a trial, or if by means of challenges or exemptions a sufficient number of unexceptionable ones do not remain, either party may pray a *tales*; which is a supply of such men as are summoned upon the pannel, in order to make up a deficiency. See 6 Geo. IV. c. 50, s. 37, and JURY.

Talesman, a person summoned to act as a juror from amongst the bystanders in the court.

Talfourd's Act. (1) Amending the law of copyright, 5 & 6 Vict. c. 45; see COPYRIGHT.

(2) Giving a mother the custody of children under seven); 2 & 3 Vict. c. 54, repealed and replaced by 36 Vict. c. 12, which extends the age to sixteen: see INFANT.

Talion, law of retaliation. See LEX TALIONIS.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium. 1 Co. 52.—(Interpretation is always to be made in such a manner that what is absurd and inconvenient may be avoided, and the judgment be not illusory.)

Talis non est eadem; nam nullum simile est idem. 4 Co. 18.—(What is like is not the same; for nothing similar is the same.)

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstite sed tantummodo est et consistit in consideratione et intelligentiâ legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus. Co. Litt. 342.—(Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance], and others have said that such a thing or such a right is in the clouds.)

Tallagers, tax or toll-gatherers; mentioned by *Chaucer*.

Tallagium facere, to give up accounts in the Exchequer, where the method of accounting was by tallies.

Talley, or **Tally**, a stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts; one part was held by the creditor, and the other by the debtor. The use of tallies in the Exchequer was abolished by 23 Geo. III. c. 82, and the old tallies were ordered to be destroyed by 4 & 5 Wm. IV. c. 15.

Tallia, commons in meat and drink.

Talliage. See TAILAGE.

Tally trade, a system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly instalments.—*McCull. Comm. Dict.* (See PEDLAR.) A tally was a common security for money in the days of Edward I.—2 *Reeves*, c. 11, p. 253, n (*b*). See PEDLARS.

Talookdar, a holder of a *talook*, which is a small portion of land; a petty land agent.—*Indian.*

Tam quam, *writ of error from inferior courts*, when the error is supposed to be as

well in giving the judgment as in awarding execution upon it. (*Tam in redditione judicii, quam in adjudicatione executionis.*)

Tangible property, corporeal property.

Tanistry, or **Tanistria**, an ancient municipal law or tenure, which allotted the inheritance of lands, castles, etc., to the oldest and most worthy and capable house of the deceased's name and blood, without any regard to proximity. This, in reality, was giving it to the strongest, and naturally occasioned bloody wars in families; for which reason it was abolished in the reign of James I.—*Encyc Lond.*; 3 *Hallam's Const. Hist.* c. 18, p. 377.

Tannahdar, a petty police officer.—*Indian.*

Tarde venit [Lat.] (*it came too late*).

Tare and Tret. See ALLOWANCE.

Tariff [Span.], a cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and states that hold commerce together.—*Encyc. Lond.*

Tasmania, formerly called Van Diemen's Land. See 5 & 6 Vict. c. 13; 8 & 9 Vict. c. 95; 10 & 11 Vict. c. 57; 18 & 19 Vict. c. 56; 24 & 25 Vict. c. 52; and 29 & 30 Vict. c. 74.

Tath. In the counties of Norfolk and Suffolk, the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the tath.—*Spelm.*

Tau, a cross.—*Selden.*

Tauri liberi libertas, a common bull, because he was free to all the tenants within such a manor, liberty, etc.

Tautology, describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric; it differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms: the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never.

Tax [fr. *tâsg.*, Wel.; *taxe*, Fr. and Dut.], an impost; a tribute imposed on the subject; an excise; tallage.

The general principles of taxation are these:

(1) The subjects of every estate ought to contribute to the support of the government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.

(2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person.

(3) Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.

(4) Every tax ought to be so contrived, as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.

Taxes are either direct or indirect. A direct tax is one that is demanded from the very persons who are intended or desired to pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another: such as the excise or customs. Taxes may be laid on any one of the three sources of income (rent, profits, or wages); or a uniform tax on all of them.—3 *Smi. Wealth of Nat.*, b. 5, c. 2, and 2 *Mill's Pol. Eco.*, b. 5, cc. 2, 3.

The land tax, house duties, and property tax are collected under the consolidating 'Taxes Management, 1880,' 43 & 44 Vict. c. 19.

Taxatio Ecclesiastica, the valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III., and hence called *Taxatio Norwicencis.* It is also called Pope Innocent's Valor.

Taxation of Costs. The mode by which certain officers of the various courts allow or disallow the sums claimed by solicitors from their clients, or by the one party in an action from the other.

The charges which solicitors are allowed to make in actions are regulated by R. S. C. 1883, Order LXV., and their charges in conveyancing, etc., business by the 'Solicitors' Remuneration Order' (see SOLICITOR). As between party and party a taxation of costs is always had, and the costs which are disallowed cannot be recovered by the successful from the unsuccessful party, but must be paid nevertheless by such successful party to his solicitor unless they be disallowed as between solicitor and client. Taxation as between solicitor and client, which may be

had whether the business be transacted in court or not, is only had upon the application of the party chargeable by the signed bill of costs, until the expiration of a month from the delivery of which the solicitor is disabled, by the Solicitors Act, 1843, 6 & 7 Vict. c. 43, s. 37, from suing the client upon such bill. The mode of taxation is pointed out by that enactment, and in particular it is provided (with an exception for 'special circumstances') that if the bill when taxed be less by a sixth part than the bill delivered, the solicitor must pay the costs of the taxation, but if otherwise, the party chargeable must pay them.

Taxers, two officers yearly chosen in Cambridge to see the true gauge of all the weights and measures.

Taxing-masters, officers of the Supreme Court, who examine and allow or disallow items in bills of costs. See OFFICERS OF THE SUPREME COURT.

Tax-ward, an annual payment made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Abolished.

Taylor's (Michael Angelo) **Act**, 57 Geo. III. c. 29, for paving certain streets of the Metropolis. See MICHAEL ANGELO TAYLOR'S ACT.

Team, or **Theame** [fr. *tyman*, Sax., to teem or bring forth] a privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, etc.—*Glan.* l. 5, c. 2.

Teamster, a waggoner who carries goods for hire.

Technical Instruction. By the Technical Instruction Act, 1889, 52 & 53 Vict. c. 76, technical instruction, i.e., by s. 8, instruction in the principles of science and art applicable to industries, but not including the teaching the practice of any trade or industry or employment, may be provided by local authorities at the expense of the ratepayers; and by the Technical Instruction Act, 1891, 54 Vict. c. 4, a local authority may provide for a supply of such instruction in a school outside its own district, so far as necessary for the requirements of its own district, in cases where similar provision cannot be so advantageously made by aiding a school within its own district.

Teding-penny, tething-penny, tithing-penny, a small duty to the sheriff from each tithing, towards the charge of keeping courts, etc., from which some of the religious houses were exempted by royal charter.

Teep, a note of hand, a promissory note given by a native banker or money-lender to *zemindars* and others, to enable them to furnish government with security for the payment of their rents.—*Indian.*

Tehsildar, one who has charge of the collections; a native collector of a district acting under a European or zemindar.—*Indian.*

Teind-masters, those entitled to tithes.

Teinds, tithes.

Teinland, thaneland, which see.

Telegraphise, written evidence of things past.—*Blount.*

Telegraphs.—See ELECTRIC TELEGRAPHS, and POST OFFICE TELEGRAPHS.

Teller, one who numbers; a numberer; four officers in the Exchequer, whose offices were abolished by 4 & 5 Wm. IV. c. 15.

Telligraphum [fr. *tellus*, Lat., land; and γράφω, Gk., to write], an Anglo-Saxon charter of land.—1 *Reeves' Hist. Eng. Law*, c. 1, p. 10.

Tellwore, that labour which a tenant was bound to do for his lord, for a certain number of days.

Tementale, or **Tenementale**, a tax of two shillings upon every ploughland; a decennary. See that title.

Temple, two inns of court, thus called, because anciently the dwelling-place of the Knights-Templars. On the suppression of that Order, they were purchased by some professors of the Common Law, and converted into *hospitia* or inns of court. They are called the *Inner* and *Middle* Temple, in relation to Essex House, which was also a part of the house of the Templars, and called the *Outer* Temple, because situated without Temple-bar. See INNS OF COURT.

Temporal lords, the peers of the realm; the bishops are not in strictness held to be peers, but merely lords of parliament.—2 *Steph. Com.*

Temporality, or **Temporals**, secular possessions, as distinguished from ecclesiastical rights; such revenues, lands, and tenements as archbishops and bishops have had annexed to their sees by the kings and others, from time to time, as they are barons and lords of Parliament.—*Cowel.*

Temporalty, the laity; secular people.

Temptatio, or **Tentatio**, a trial or proof.

Tempus pessonis, mast-time in the forest, which is about Michaelmas to St. Martin's Day, November 11.—*Cowel.*

Tempus semestre, half a year, and not six lunar months.—*West. II.* c. 5.

Tena, a coif worn by ecclesiastics.

Tenancy [fr. *tenentia*, law Lat.], the condition of a tenant; the temporary possession of what belongs to another.

Tenancy in Common. This estate is created when several persons have several distinct estates, either of the same or of a different

quantity, in any subject of property, in equal or unequal shares, and either by the same act or by several acts, and by several titles, and not a joint title.

A tenancy-in-common differs from a joint-tenancy in this respect: joint-tenants have one estate in the whole, and no estate in any particular part; they have the power of alienation over their respective aliquot parts, and by exercising that power, may give a separate and distinct right to their particular parts. Tenants-in-common have several and distinct estates in their respective parts; hence the difference in the several modes of alienation and assurance by them. Each tenant-in-common has, in contemplation of law, a distinct tenement and a distinct freehold.

Tenants-in-common hold by unity of possession, because neither of them knows his own severalty, and therefore they all occupy promiscuously. This is the only unity belonging to the estate; for since the tenants may hold different kinds of interest, so there exists no necessary unity of interest, and there is no unity of title, for one may claim by descent, and another by purchase; also the estate may vest in each tenant at different times. There being no entirety of interest among tenants-in-common, each is seised of a distinct though undivided share; they hold *per my et non per tout*, and consequently the *jus accrescendi* does not apply to them.

This estate is subject to curtesy and dower. It is dissolvable,

(1) By a voluntary deed of partition;

(2) By the union of all the titles and interests in one tenant by grant, devise, surrender, or otherwise, which reduces the whole estate to a severalty;

(3) By compulsory partition.

See PARTITION.

Tenancy, Joint. See JOINT TENANCY.

Tenant, one that holds land of any one inclusive of the sovereign; it is therefore applicable to every subject holding land in this country; but the word is always used relatively, and as the relation to the sovereign is seldom called in question, it more commonly signifies one who holds of another subject: the owner is seldom characterised as tenant except where it is necessary to particularise the quantity of his estate. 2. One that has temporary possession and use of the land of another, correlative to *landlord*.

Tenantable repair, such a repair as will render a house fit for present habitation.

Tenant-right, in England, (1) a custom ensuring to an outgoing tenant compensation from his landlord for not being able to reap the full benefit of labour or improvements expended or made during the tenancy; or (2) the money due in pursuance of the custom (see *Faviell* v. *Gaskoin*, 7 *Ex.* 273).

See also CUSTOM OF THE COUNTRY.

In Ireland, also a custom either ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than may be sanctioned by the general sentiments of the community; or entitling a tenant of a farm to receive purchase-money, amounting to so many years' rent, on its being transferred to another tenant. It has long prevailed in Ulster.—1 *Mill's Pol. Eco.* 385. See 33 & 34 Vict. c. 46 (the Landlord and Tenant (Ireland) Act, 1870), and 44 & 45 Vict. c. 49 (the Land Law (Ireland) Act, 1881).

Tenants' Compensation Act, 1890, 53 & 54 Vict. c. 57. At Common Law a mortgagor, and therefore any tenant of his becoming such after mortgage without concurrence of the mortgagee, is a mere trespasser, liable to ejectment without notice, and so liable to lose all his growing crops, etc., without compensation from the mortgagee. Nor does the Agricultural Holdings Act apply between such a tenant and the mortgagee, for that Act applies only to land held under a contract of tenancy, and with the mortgagee the tenant has no contract. The Tenants' Compensation Act, to remedy this hardship, provides that where a person occupies land under a contract of tenancy (whenever made) with the mortgagor, which is not binding on the mortgagee, the occupier shall, as against the mortgagee who takes possession, be entitled to such compensation for crops, improvements, or other matters whatever, under the custom of the country, or the Agricultural Holdings Act, as would be due to him but for the mortgagee taking possession; and further gives such occupier a right to six months' notice, before being deprived of possession by the mortgagee otherwise than in accordance with the contract of tenancy.

As to special right under the Conveyancing Act of the mortgagor to grant lease, see MORTGAGE.

Tende, to tender or offer.—*O. N. B.* 123.

Tender, offer; proposal for acceptance.

A tender of satisfaction is allowed to be made in most actions for money-demands. It need not be made by the debtor personally to the creditor personally; it may be made through an authorised agent, and a tender to one of several joint creditors is sufficient. A tender must be absolute and unconditional, and the money must be actually produced at the time of the tender, unless that be dispensed with by the creditor.

By the Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 4, it is provided that a tender of payment of money, if made in coins legally issued by the Mint in accordance with the provisions of that Act, and not called in, and not become materially diminished in weight, or shall be a legal tender;—in the case of gold coins for a payment of any amount; in the case of silver coins for a payment of an amount not exceeding 40*s.*, but for no greater amount; and in the case of bronze coins for the payment of an amount not exceeding 1*s.*, but for no greater amount.

Bank of England notes are a legal tender for debts above 5*l.* (3 & 4 Wm. IV. c. 98, s. 6). The 29 & 30 Vict. c. 65, authorises the Queen in Council to make gold coined in the Colonies legal tender in England.

Tender of Amends. See AMENDS.

Tenement [fr. *teneo*, Lat., to hold], in its vulgar acceptation is only applied to houses and other buildings, but in its original, proper, and legal sense, it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal kind. Thus *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc.—2 *Bl. Com.* 16.

Tenementary land, the outland of manors, granted to tenants by the Saxon thanes, under arbitrary rents and services.—*Spelm.*

Tenementis legatis, an ancient writ, lying to the City of London, or any other corporation (where the old custom was, that men might devise by will lands and tenements, as well as goods and chattels), for the hearing and determining any controversy touching the same.—*Reg. Orig.* 244.

Tenendas, that clause of a charter by which the particular tenure is expressed.

Tenendum, that clause in a deed wherein the tenure of the land is limited and created. Its office is to limit and appoint the tenure of the land which is held, and how and of whom it is to be held. See DEED.

Tenens nil facere potest, propter obligationem homagii, quod vertatur domino ad exhæredationem, vel aliam atrocem injuriam; nec dominus tenenti è converso. Quod si fecerint, dissolvitur et extinguitur homagium omnino, et homagii connexio et obligatio; et erit inde justum judicium cum venerit contra homagium et fidelitatis sacramentum, quod in eo in quo delinquunt puniantur; scilicet, in personâ domini quod amittat dominium, et in personâ tenentis quod amittat tenementum. Co. Litt. 65.—(The tenant, by force of the obligation of homage, can do no action which may operate to the disinheriting his lord, or doing him any atrocious injury; and so conversely, cannot the lord, as against the tenant. For if they act in such a manner, they dissolve and extinguish altogether the homage and the connection and obligation of homage; and when anything is done contrary to the homage and the oath of fidelity, it is just that the parties be punished through that very thing with regard to which they are guilty; that is to say, that the lord lose his lordship; and the tenant his tenement [according as one or the other is guilty]).

Tenentibus in assisâ non onerandis, a writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them.—*Reg. Orig.* 214.

Tenheded, or **Tienheofed** [Sax.], a dean.—*Cowel.*

Ten Hours Act. The popular name for 10 & 11 Vict. c. 29, which first limited the time of work for women and children in mills and factories, and is now repealed and replaced by the Factory and Workshop Act, 1878. See FACTORY.

Tenmentale, or **Tenmantale**, the number of ten men, which number, in the time of the Saxons, was called a decennary; and ten decennaries made what we call a hundred. Also, a duty or tribute paid to the Crown, consisting of two shillings for each ploughland.—*Encyc. Lond.*

Tenne, *tawny*, *orange*, or *brusk*; orange colour.

In engravings it should be represented by lines in bend sinister crossed by others barways. Heralds who blazon by the names of the heavenly bodies, call it *dragon's head*, and those who employ jewels, *jacinth*. It is one of the colours called stainand.—*Heraldic term.*

Tennis, Game of, legalised by 8 & 9 Vict. c. 109.

Tenor, sense contained; general course or drift. *Tenor* implies that a correct copy is set out, but the word *effect* alone implies that the substance only is set out.

Tenore indictamenti mittendo, a writ whereby the record of an indictment, and the process thereupon, was called out of another court into the Queen's Bench.—*Reg. Orig.* 69. See CERTIORARI.

Tenor est qui legem dat feudo. Craig. Jus. Feud., 3rd ed., 66.—(It is the tenor of the feudal grant which regulates its effect and extent.)—*Broom's Leg. Max.*, 6th ed., 430.

Tenore præsentium, *by the tenor of these presents*, i.e., the matter contained therein, or rather the intent and meaning thereof.—*Cowel.*

Tenseriæ, a sort of ancient tax or military contribution.

Tentates panis, the essay or assay of bread.—*Blount.*

Tenths [*decimæ*, Lat.], tithes; also the tenth part of the annual value of every spiritual preferment, paid in early times to the Pope, transferred from the Pope to the Crown by 26 Hen. VIII., c. 3, and from the Crown, for the augmentation of small livings, to the Church by 2 Anne c. 8. See also First Fruits; Bounty of Queen Anne.

Tenura est pactio contra communem feudi naturam ac rationem, in contractu interposita. Wright's Ten. 21.—(Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.)

Tenure, the mode of holding property; it is the direct result of feudalism, which separated the *dominium directum* (the dominion of the soil), which it placed mediately, or immediately, in the Crown, from the *dominium utile* (the possessory title), the right to the use and profits in the soil, designated by the term seisin, which is the highest interest a subject can acquire.

Without tracing the origin of tenure back into remote antiquity, it is ascertained that there were originally two modes of holding land, viz. :—(1) *Allodial* (from *los*, signifying *lot*), over which the owner had entire and irresponsible dominion, which he could dispose of at his own pleasure, or transmit as an inheritance to his children. The land was also attachable to answer the owner's debts, and could also be made available for commercial enterprise. Such tenure was acquired upon the distribution of lands by *lot*, among the Franks. (2) *Feudal* (from *od*, possession, or estate, and *feo*, wages, pay), over which the owner had but a conditional dominion, acknowledging a superior lord, upon whose pleasure the tenure precariously depended, and without whose consent nothing could be done. And this is the groundwork of *the feudal system*, which displaced the laws imposed upon this country by the Saxons and the Danes, who, migrating from the forests of Germany, had established themselves and their laws in this kingdom.

Out of feudalism arose the maxim, that all lands in this kingdom were originally granted by our kings, and held mediately or immediately of the king, as lord paramount, in consideration of certain services to be rendered by the holder. There is then no allodial land in England. Those who held immediately from the king were called tenants *in capite* (in chief), which was the most honourable tenure. This was of two kinds, either *ut de honore*, where the land was held of the king as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held of him in right of the Crown itself. When these tenants granted portions of their lands to inferior persons they were called *mesne* (middle) lords or barons, with regard to such inferior holders, who were styled tenants *paravail*, the lowest tenant, because they were supposed to make avail or profit of the land. The lands were called feuds (*feoda*), either proper, which were purely military, given *militiæ gratiâ* to persons qualified for military service; or improper, which did not, in point of acquisition, services, and the like, strictly conform to the nature of a mere military feud, such as those that were sold or bartered for any equivalent, or granted free from all circumstances, or in consideration of any certain services.

Knight service proper, or *tenure in chivalry*, was the original and most honourable species of tenure created by a determinate quantity of land called a knight's fee. Its extent was twelve plough-lands, that is, as much land as could be reasonably ploughed in one year by twelve ploughs, or, according to other authorities, 800 acres of land, and others say 680, and its value in those times was 20*l.* *per annum.* This tenure was granted by words of pure donation, *dedi et concessi* (I have given and granted); transferred by investiture, i.e., by a solemn and public delivery of the very land itself by the lord to a vassal, in the presence of his other vassals, and perfected by homage and fealty; *homage* being the acknowledgment of tenure and *fealty* the solemn oath made by the vassal of fidelity and attachment to the lord.

The owner of a knight's fee was bound to attend the lord to the wars on horseback, armed as a knight, for forty days in every year, if called upon, and this attendance was his rent or service for the land he held.

Grand serjeanty was another species of tenure, which some writers think was superior to knight-service, whereby the tenant was bound instead of serving the king, *generally* in the wars, to do him some special, certain, and honorary service in person, as to be marshal of his host, or high steward of England, or to carry his banner or his sword, or to be his butler, champion, or other officer at his coronation. In most other respects it was similar to knight-service, only he was not bound to pay aid or escuage; and when a tenant by knight-service paid 5*l.* for a

relief, a tenant by grand serjeanty paid one year's value of his land, were it much or little.

At last these military tenures, together with all their grievances, were destroyed at the Restoration. The statute 12 Car. II. c. 24, enacted that the court of award and liveries, and all wardships, liveries, *primer seisins* and *ouster-lemains*, values, and forfeitures of marriage, by reason of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knight-service, and escuage, and also aids for marrying the daughter or knighting the son, and all tenures of the king *in capite*, be likewise taken away; and that all sorts of tenures held of the king or others, be turned into free and common socage, save only tenures in frankalmoign, tenures by copy of court roll, and honorary services of grand serjeanty; and that all tenures which shall be created by the king, his heirs or successors, in future shall be free and common socage.

The other subdivision of frank tenement is *free socage* [*soca*, Lat.], which, most probably, means plough-service. It is distinguished from knight-service in this respect, that it is held by a certain determinate but honourable duty; whereas we have seen, that the tenure in chivalry or knight-service was uncertain, precarious, and indeterminate. These free socage tenures are said by some persons to be the relics of Saxon liberty, which were left untouched by the oppressive hand of the Norman.

The three species of free socage tenures are *petit serjeanty*, *tenure in burgage*, and *gavelkind*.

(1) *Petit serjeanty* [*parva serjeantia*, Lat.], greatly resembles grand serjeanty, for as the latter is a personal service, the former is a rent or render, both tending to some purpose concerning the king's person. The service in *petit serjeanty* is the rendering annually to the king some small implement of war, as a sword, a buckler, a bow without a string, or the like. Both the tenures in serjeanty must be held from the Crown. The lands and property which were granted to the Dukes of Marlborough and Wellington for their brilliant military services are held in *petit serjeanty*, each rendering annually a small flag or ensign, which is deposited in Windsor Castle.

(2) *Tenure in burgage* [*burgus*, Lat.], is where houses, or lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of *borough-English*, evidently of Saxon origin, and so named to distinguish it from the Norman customs. See BOROUGH ENGLISH.

(3) *Gavelkind* [*gyfe-eal-kyn*, given to all the kindred]. See GAVELKIND.

The other great class of tenements is *villenage*, which is subdivided into *pure* and *privileged* villenage.

Pure villenage, was the origin of the present copyhold tenures, or tenure by copy of court-roll, at the will of the lord. See MANOR; COPYHOLD; HERIOT.

Privileged villenage, sometimes called *villein-socage*, is where lands have been held of the Crown from the Conquest. This is an exalted species of copyhold, held according to custom, and not according to the mere will of the lord. It is still subsisting under the name of tenure in *ancient demesne*, which consisted of those lands or manors that appeared in Domesday Book to have been actually in the possession of the Crown in the reign of Edward the Confessor or William the Conqueror. These tenants, although their services were of a base origin, were esteemed highly-privileged villeins, for they could not be compelled to relinquish their lands at the will of their superior, *et ideo dicuntur liberi*. This tenure was not abolished by the 12 Car. II. c. 24.

Tenures in ancient demesne are of three kinds:—

(1) Tenures in ancient demesne (properly so called), which is a free holding by grant from the Crown. The tenants are bound in respect of their lands, to perform some of the better sort of certain villein services, which are now commuted into money rents.

(2) Privileged copyholds, customary freeholds or free copyholds, are held of a manor, which is ancient demesne, according to the custom of the manor, but not of the lord's will. These lands are in fact copyholds, and therefore the term customary freeholds is not strictly correct; for although the tenants have an interest nearly as good as freehold, yet they have not a freehold interest.

(3) Copyholds of base tenure are lands of a manor, which is ancient demesne, but held merely at the lord's will.

The old Saxon ecclesiastical tenures, which were continued under the Normans, are these:

(1) *Frankalmoigne* [free alms], by which religious corporations and their successors held lands of the donor, without any service other than the praying for the souls of the donor and his heirs. See FRANKALMOIGNE.

(2) *Tenure by divine service*, to which was annexed some special divine service, as to sing so many masses, to distribute a certain

sum in alms, etc., which were contradistinguished from *free* alms; for if unperformed the lord could distrain without complaining to the visitor.

The statute 12 Car. II. c. 24, excepts these spiritual tenures from abolition, so that many are now subsisting, but only the Crown can create them in the present day.

Terce, thirds; dower.—*Scotch Term.*

Term fee, a certain sum, which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party who has to pay costs to him; it is payable for every term, commencing on the day the sittings in London and Middlesex of the High Court or Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place. See *App. N. to the Rules of the Supreme Court., ad. fin.*

Term in gross. See OUTSTANDING TERM.

Terminal Charges of a railway company, those made at either terminus, in addition to the charges for carriage, as for warehousing, loading, unloading, cartage to or from station, etc. The special Act of each company, in prescribing a maximum rate, usually excepts from such rate 'a reasonable sum'; for e.g., 'loading, covering, and unloading of goods at any terminal station of such goods, and for delivery and collection and any other services incidental to the duty or business of a carrier, where such services are or any of them is performed by the company'; and the Railway and Canal Traffic Commission has jurisdiction to determine what is a reasonable sum in case of dispute. See *Hodges on Railways*, 7th ed.

The Railway and Canal Traffic Act, 1888, which by s. 24 directs railway companies to prepare revised classifications of traffic and schedules of maximum rates, and to state therein the nature and amount of all 'terminal charges,' by s. 55 defines the term 'terminal charges,' as including 'charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat'; and the London and North Western and eight other companies have, in their new Rates Acts (see RAILWAYS), new and elaborate terminal clauses.

Terminating Building Societies, societies where the members commence their monthly contributions on a particular day, and continue to pay them until the realisation of shares to a given amount for each member, by the advance of the capital of the society to such members as require it, and the payment of interest as well as principal by them, so as to ensure such realisation within a given period of years. See Building Societies Act, 1874, s. 5, and BUILDING SOCIETY.

Termor, he that holds lands or tenements for a given number of years or for life.

Terms, the periods during which the superior courts at Westminster were open.

The legal year consisted of four terms, Michaelmas, Hilary, Easter, and Trinity (which see), the year beginning with Michaelmas Term.

The commencement and duration of the terms were fixed by the statutes, 11 Geo. IV. & 1 Wm. IV. c. 70, s. 6, and 1 Wm. IV. c. 3, s. 3. By the first of these enactments Hilary Term began on the 11th and ended on the 31st of January; Easter Term began on the 15th of April and ended on the 8th of May; Trinity Term began on the 22nd of May and ended on the 12th of June; and Michaelmas Term began on the 2nd and ended on the 25th of November. Vacations in the Equity Courts were regulated also by Cons. Ord. V.

By the Judicature Act, 1873, s. 26, it is provided that the division of the legal year into terms shall be abolished so far as relates to the administration of justice; but in all other cases in which, under the law previously existing, the terms into which the legal year is divided were used as a measure for determining the time at or within which any act was required to be done, the same may continue to be referred to, for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. The same section provides that '*subject to rule of Court*,' the High Court and Court of Appeal may sit at any time. See therefore SITTINGS.

Our university terms are different from the law terms.

Terms (to be under terms), conditions on which indulgence is granted by the Court, as to take short notice of trial, etc., etc.

Terms for years. An estate for years is denominated a term, because its enjoyment is strictly fixed, for by 'term' is meant not only the interest which passes, but also the period for which it is held. It is a chattel real; chattel, because the estate passes to the owner's executors at his death, and not to his heir-at-law, and so far partakes of the nature of personalty; real, because it is an interest in lands, and therefore partakes of the nature of real property.

A term is usually created by a deed or specialty contract, called a lease or demise under the Common Law (see LEASE), and the appropriate operative verbs therein are 'de-

mise, *or* grant, lease, and to farm let'; but any words showing the intent of the parties that the one (the lessor) shall divest himself of the possession, and the other (the lessee) come into it for a determinate time, are generally sufficient for the purpose.

Termes (Les) de la Ley. See RASTELL.

'**Terminum,**' a day given to a defendant.

Terminus a quo, the starting point.

Terminus ad quem, the terminating point.

Terminus annorum certus debet esse et determinatus. Co. Litt. 45.—(A term of years ought to be certain and determinate.)

Terminus et feodum non possunt constare simul in unâ eddemque personâ. Plow. 29.—(A term and the fee cannot both be in one and the same person at the same time.)

Terra, arable land.—*Kennet's Gloss.*

Terra affirmata, land let to farm.

Terra boscalis, woody land.

Terra culta, cultivated land.

Terra debilis, weak or barren land.—*Inq.* 22 *R.* 2.

Terra dominica, or **Indominicata,** the demesne land of a manor.—*Cowel.*

Terra excultabilis, land which may be ploughed.—*Mon. Angl.* i. 426.

Terra extendenda, a writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery.—*Reg. of Writs,* 293.

Terra frusca, or **frisca,** fresh land, not lately ploughed.—*Cowel.*

Terra hydata, land subject to the payment of hydage.—*Selden.*

Terra lucrabilis, land gained from the sea or enclosed out of a waste.—*Cowel.*

Terra manens vacua occupanti conceditur. 1 Sid. 347.—(Land lying unoccupied is given to the first occupant.)

Terra Normanorum, land held by a Norman.—*Paroch. Antiq.* 197.

Terra nova, land newly converted from wood ground or arable.—*Cowel.*

Terra putura, land in forests, held by the tenure of furnishing food to the keepers therein.—4 *Inst.* 307.

Terra sabulosa, gravelly or sandy ground.

Terra Testamentalis, gavelkind land, being disposable by will.—*Spelm.*

Terra vestita, land sown with corn.—*Cowel.*

Terra wainabilis, tillable land.—*Cowel.*

Terra warrenata, land that has the liberty of free-warren.

Terræ dominicales regis, the demesne lands of the Crown.

Terrages, an exemption from all uncertain services.—*Cowel.*

Terrarius, a landholder.—*Leg. William I.*

Terre-tenant, Tertenant, he who is in the actual possession and enjoyment of land.

Terrier, or **Terrar,** a register or survey of land. As to when it is evidence, see 3 *Price,* 380.

Terris bonis et catallis rehabendis post purgationem, a writ for a clerk to recover his lands, goods, and chattels, formerly seised, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.—*Reg. Orig.*

Terris et catallis tentis ultra debitum levatum, a judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.—*Reg. Judic.*

Terris liberandis, a writ that lay for a man convicted by attaint, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste.—*Reg. Orig.* 232. Also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.—*Ibid.* 293.

Tertius interveniens, one who voluntarily interposes in a suit depending between others, with a view to the protection of his own interests.—*Civ. Law.*

Test, to bring one to a trial and examination; or to ascertain the truth.

Test Act, 25 Car. II. c. 2, by which it was provided that all persons having any offices, civil or military (with the exception of some few of an inferior kind), or receiving pay from the Crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the Sacrament of the Lord's Supper according to the usage of the Church of England. The provisions of the Test Act were afterwards extended by 1 Geo. I. st. 2, c. 13; 2 Geo. II. c. 31; and 9 Geo. II. c. 26. The Test Act was repealed by 9 Geo. IV. c. 17, which also repealed the Corporation Act, 13 Car. II. st. 2, c. 1. See 29 & 30 Vict. c. 22, and 4 *Broom & Had. Com.*

Testa de Nevil, an ancient document in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, more properly called *Liber Feodorum.*

These books contain principally accounts (1) of fees holden either immediately of the king, or others who held of the king *in capite,* and if alienated whether the owners were infeoffed *ab antiquo* or *de novo,* as also fees holden in frankalmoigne, with the values thereof respectively; (2) of serjeanties holden of the king, distinguishing such as were

rented or alienated, with the values of the same; (3) of widows, and heiresses of tenants *in capite*, whose marriages were in the gift of the king, with the value of their lands; (4) of churches in the gift of the king, and in whose hands they were; (5) of escheats, as well of the lands of Normans as others, in whose hands the same were, and by what services holden; (6) of the amount of the sums paid for scutage and aid, etc., by each tenant.

These volumes were printed in 1807, under the authority of the commissioners of the records of the realm.

Testament, a disposition of personal property to take place after the owner's decease, according to his desire and direction. See WILL.

As to the modes of making a testament according to the Civil Law, see *Sand. Just.*, 7th ed., 164 *et seq.*, *Cum. C. L.* 117.

Testamenta cum duo inter se pugnantia re periuntur, ultimum ratum est; sic est, cum duo inter se pugnantia reperiuntur in eodem testamento. Co. Litt. 112.—(When two conflicting wills are found, the last prevails: so it is when two conflicting clauses occur in the same will.)

Testamenta latissimam interpretationem habere debent. Jenk. Cent. 81.—(Wills ought to have the broadest interpretation.)

Testamentary, given by will; contained in a will.

Testamentary causes, proceedings in the Probate Branch of the High Court of Justice relating to the proving and validity of wills and intestacies of personal property, over which it has acquired exclusive jurisdiction, by 20 & 21 Vict. c. 77, amended by 21 & 22 Vict. c. 95. It also has jurisdiction (not exclusive) in certain cases to inquire into the validity of wills, which concern realty as well as personalty. See PROBATE COURT, 3 *Broom & Had. Com.* 424 *et seq.*, and *Coote's Probate Court Practice.* See also PLEADING.

Testamentary guardian, one appointed by a father's will over his child, pursuant to 12 Car. II. c. 24. See GUARDIAN.

Testamenti factio, the ceremony of making a testament, either as testator, heir, or witness.—*Civ. Law.*

Testamentum, i.e., *testatio mentis, facta nullo præsente metu periculi, sed cogitatione mortalitatis.* Co. Litt. 322.—(A testament, that is, the witnessing of the mind, made under no present fear of danger, but in expectancy of death.)

Testamentum omne morte consummatur. Ibid.—(Every will is perfected by death.)

Testate, having made a will.

Testation, witness, evidence.

Testator, a man who makes a will or testament. See WILL.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. Ibid.—(The last will of a testator is to be thoroughly fulfilled according to his real intention.)

Testatrix, a woman who makes a will.

Testatum, the witnessing part of a deed or agreement. See DEED.

Testatum writ, a process of execution which was issued into a different county than that in which the venue was laid in the declaration; it must have been founded on a writ *ejusdem generis*, issued into the county of the venue, and returned *nulla bona*, etc. It is abolished by C. L. P. Act, 1852, s. 21. See GROUND WRIT.

Teste [*being witness*], the witnessing part of a writ, warrant, or other proceeding, which expresses the date of its issue.

Tested (*to be*), to bear the *teste.* A writ is issued in the name of the Sovereign, and the Lord Chancellor is supposed to witness it. All writs are, by R. S. C. 1883, Ord. II., Rule 8, tested in the name of the Lord Chancellor. They were, before the Judicature Acts, tested in the name of the Lord Chancellor if issuing from the Court of Chancery, or of the Lord Chief Justice if issuing from the Queen's Bench, etc.

Testes ponderantur, non numerantur.—(Witnesses are weighed, not numbered.)

Testes qui postulat debet dare eis sumptus competentes. Reg. Jur. Civ.—(Whosoever demands witnesses must find them in competent provision.)

Testibus deponentibus in pari numero dignioribus est credendum. 4 Inst. 279.—(Where the number of witnesses is equal on both sides, the more worthy are to be believed.)

Testimoignes, witnesses.—*Law French.*

Testimonia ponderanda sunt, non numeranda.—(Evidence is to be weighed, not enumerated.)

Testimonial proof, parol evidence.—*Civ. Law.*

Testimony, evidence given; proof by a witness. See EVIDENCE and PERPETUATING TESTIMONY.

Testis de visu præponderat aliis. 4 Inst. 279.—(An eye-witness is preferred to others.)

Testis lupanaris sufficit ad factum in lupanari. Moor, 817.—(A lewd person is a sufficient witness to an act committed in a brothel.)

Testis nemo in suâ causâ esse potest. Reg. Jur. Civ.—(No one can be a witness in his own cause.) This disqualification of parties is removed, except as to criminal proceedings, by 14 & 15 Vict. c. 99.

Testis oculatus unus plus valet quam auriti

decem. 4 Inst. 279.—(One eye-witness is worth more than ten ear-witnesses.)

Tests. See UNIVERSITY.

Text book, a legal treatise which lays down principles or collects decisions on any branch of the law.

Thames Embankment, from Westminster Bridge to Blackfriars Bridge, 25 & 26 Vict. c. 93; 26 & 27 Vict. cc. 45, 75. As to the Southern Embankment of the Thames, see 26 & 27 Vict. c. 75; 27 & 28 Vict. c. 35. See also 31 & 32 Vict. c. 111 (North and South Embankments); and 31 & 32 Vict. c. 135. (Chelsea).

Thames Watermen. By 7 & 8 Geo. IV. c. 75, the watermen, wherrymen, and lightermen of the Thames were consolidated into one body corporate, in the freemen and apprentices whereof is vested, subject to certain exceptions, the exclusive right of navigating that river for hire.

Thanage of the King, a certain part of the king's land or property, of which the ruler or governor was called thane.—*Cowel.*

Thane [fr. *thegn,* Sax., a servant], an Anglo-Saxon nobleman: an old title of honour, perhaps equivalent to baron. There were two orders of thanes, the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.—*Cowel.*

Thanelands, such lands as were granted by charter of the Saxon kings as to their thanes with all immunities, except the *trinoda necessitas.*—*Cowel.*

Thaneship, the office and dignity of a thane; the seigniory of a thane.

Thavies Inn, an inn of Chancery. See INNS OF CHANCERY.

Theatre, a place kept for the public performance of stage-plays, which expression includes 'every tragedy, comedy, farce, opera, burletta, interlude, pantomime, or other entertainment of the stage.' By 6 & 7 Vict. c. 38, such a place may not be had or kept without a license from the Lord Chamberlain in the metropolis, and from the justices of the peace elsewhere. The licensing power of the justices is transferred to the County Councils by the Local Government Act, 1888. By s. 12 of the Act a copy of every new stage-play intended to be acted in any theatre must be sent to the Lord Chamberlain seven days at least beforehand, and if he disallow the same, or any part thereof, the same may not be acted contrary to the disallowance, under pain (s. 15) of a penalty not exceeding 50*l.* and absolute avoidance of the license of the theatre.

Theft, larceny, which see.

Theftbote [fr. *theof,* Sax., thief, and *bote,* compensation], compounding a felony. See COMPOUNDING, and 4 *Broom. & Had. Com.* 147. See also 24 & 25 Vict. c. 96, s. 102; and 33 & 34 Vict. c. 65.

Theftbote est emenda furti capta, sine consideratione curiæ domini reges. 3 Inst. 134.—(Theftbote is the paying money to have goods stolen returned, without having any respect for the court of the king.)

Thellusson Act, 39 & 40 Geo. III. c. 98. See ACCUMULATION.

Thelonio irrationabili habendo, a writ that formerly laid for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled. —*Reg. Orig.* 87.

Thelonium, an abolished writ for citizens or burgesses to assert their right to exemption from toll.—*F. N. B.* 226.

Thelonmannus, the toll-man or officer who receives toll.—*Cowel.*

Them, or **Theme,** the right of having all the generation of villeins, with their suits and cattle.—*Termes de la Ley.*

Themmagium, a duty or acknowledgment paid by inferior tenants in respect of theme or team.—*Cowel.*

Theoden, an under-thane; a husbandman or inferior tenant.—*Spelm.*

Theof [*prædones,* Lat.], offenders who joined in a body of seven to commit depredations.—*Ang. Sax.*

Theows, Theowmen, or **Thews,** slaves, captives, or bondsmen.—*Spelm. on Feuds,* cap. 5.

Thesaurus, Thesaurium, the treasury.

Thesaurus competit domino regi, et non domino liberatis, nisi sit per verba specialia. Fitz. Coron. 281.—(A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.)

Thesaurus inventus, treasure-trove, which see.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat. 3 Inst. 132.—(Treasure-trove is an ancient hiding of money, etc., of which no recollection exists, so that it now has no owner.)

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. Ibid.—(Treasure does not belong to the king, unless no one knows who hid it.)

Thesaurus regis est vinculum pacis et bellorum nervus. Godb. 293.—(The king's treasure is the bond of peace and the sinew of wars.)

Thesmothete [fr. θεσμοθέτης, Gk.], a law-maker; a law-giver.

Thethinga, a tithing.

Thingus, a thane or nobleman; knight or freeman.—*Cowel.*

Things, the subjects of dominion or property, as distinguished from *persons*. They are distributed into three kinds: (1) things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*). See CHOSE.

Third-borough, or **Thirdborow**, an under constable.—*Cowel.*

Thirdings, the third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat in Hereford.—*Blount.*

Third-night-awn-hinde [*trium noctium hospes*, Lat.]. By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a third-night-awn-hinde, and his host was answerable for him if he committed any offence. The first night, forman-night, or uncuth (unknown), he was reckoned a stranger; the second night, twanight, a guest; and the third night, an agenhinde, a domestic.—*Bract.* l. 3.

Third party. The phrase used to introduce any one, into a scene already occupied by two in a definite relation to one another, as principal and agent, guardian and ward, solicitor and client. See AS AGAINST, AS BETWEEN.

'A Third Party' may be introduced into an action by a defendant claiming an indemnity, or any other remedy over against him, under Jud. Act, 1873, s. 24, subs. 3, and R. S. C. 1883, Ord. XVI., Rule 48, by leave of the Court or a judge upon the issue of a notice to him, called the 'third party notice.'

Third penny. See DENARIUS TERTIUS COMITATUS.

Thirlage, a servitude or tenure in Scotland, by which the possessor of certain lands is bound to carry his grain to a certain mill to be ground, for which he is bound to pay a portion of the flour or meal, varying from a thirtieth to a twelfth part, which is termed multure. This servitude is now commuted for an annual payment in grain by 39 Geo. III. c. 55. See *Bell's Scotch Law Dict.*

Thistle-take. It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permitted them to graze or take but a thistle, he should pay a halfpenny a-piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called thistle-take.—*Cowel.*

Thornton (C. J.), author of a *summa* or abridgment of Bracton, containing most of the titles of the law in a concise form. Though a professed epitomiser, he omits many things in that author, and does not adhere to his method.—2 *Reeves*, c. 11, p. 281.

Thorp, Threp, Trop [*villa*, *vicus*, Lat.], either in the beginning or end of the names of places, means a street or village.

Thrave, or **Threave** [Nor.-Fr.], twenty-four sheaves or four shocks of corn; a certain quantity of straw; also a herd, a drove, a heap.

Threats, or menaces of bodily hurt, through fear of which a man's business is interrupted, are civil injuries affecting the right of personal security. The remedy for this species of injury is in pecuniary damages.

Threatening to accuse of certain crimes, or threatening by letter to murder or to burn a house, is felony under 24 & 25 Vict. c. 96, ss. 46, 47; 24 & 25 Vict. c. 97, s. 50; and 24 & 25 Vict. c. 100, s. 16.

By 6 & 7 Vict. c. 96, if any person shall threaten to publish, or purpose to abstain from publishing, any matter or thing touching any other person with intent to induce any person to confer upon, or procure for, any person any appointment or office of profit or trust, he may be imprisoned with hard labour for any term not exceeding three years.

The Act 34 & 35 Vict. c. 32, entitled 'An Act to amend the Criminal Law relating to Violence, Threats, and Molestation,' contained various provisions for preventing the molestation of masters and workmen, to induce them to yield to particular combinations or associations. This has been repealed by the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, which, amending the law as to conspiracy and breach of contract by workmen in certain cases, also, by s. 7, makes it an offence for any person with a view to compel any other person to abstain from doing or to do any act, which such person has a legal right to do or abstain from doing, wrongfully and without legal authority:—

1. To use violence to, or intimidate such other person, or his wife or children, or injure his property; or

2. To persistently follow such other person about from place to place; or

3. To hide any tools, clothes, or other property owned or used by such other person, or deprive him of, or hinder him in the use thereof; or

4. To watch, or beset the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or

5. To follow such other person with two

or more other persons, in a disorderly manner, in or through any street or road.

It further provides that on conviction thereof by a court of summary jurisdiction (defined in s. 13), or on indictment (as mentioned in s. 9), he shall be liable either to pay a penalty not exceeding 20*l.*, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Threnges, vassals, but not of the lowest degree, of those who held lands of the chief lord.

Threshing Machines. Steam threshing machines must be fenced. See 41 Vict. c. 12.

Thrithing, a division consisting of three or four hundreds.

Throw out (*v.a.*), to ignore (a bill of indictment).

Thrymsa, a Saxon coin worth fourpence.—*Du Fresne.*

Thude-weald, a woodward, or person that looks after a wood.

Thwertnick, the custom of giving entertainments to a sheriff, etc., for three nights.

Tickets of leave, licenses to be at large, granted to convicts for good conduct, but recallable upon subsequent misconduct. See Penal Servitude Acts of 1864 and 1891, 27 & 28 Vict. c. 47, and 54 & 55 Vict. c. 69.

Tidesman, or **Tidewater**, a name, now obsolete, for a custom house officer who is placed on board a merchant ship till the goods on board are examined and placed in bond or the duties paid.

Tiel or **Tel** [Nor.-Fr.], such. See NUL TIEL RECORD.

Tierce, the third part of a pipe, or forty-two gallons.

Tigh [fr. *tèag*, Sax.], a close or enclosure.

Tigni immittendi, a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighbouring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight.—*Civ. Law.*

Tignum, any material for building.—*Ibid.*

Tihler [Sax.], an accusation.

Timber, wood felled for building or other suchlike use; in a legal sense it generally means oak, ash, and elm, but in some parts of the country is used in a wider sense, which is recognized by the law.—1 *Rol. Abr.* 649. See *St. Leon V. and P.* 26, and *Woodf. L. & T.*, 14th ed., c. xvi, s. 7.

Timberlode, a service by which tenants were bound to carry timber felled from the woods to the lord's house.—*Cowel.*

Time. Before 1751 the legal year in England began on the 25th March, therein differing from the common usage in the whole kingdom, and the legal method in Scotland. In 1751 the Gregorian, or present calendar, was substituted for the Julian Calendar by 24 Geo. III. c. 23. Time in Acts of Parliament (see, e.g., the definition of night in the Larceny Act) and legal instruments means, in Great Britain, Greenwich mean time, and in Ireland, Dublin mean time, by virtue of 43 & 44 Vict. c. 9. The computation, etc., of time for purposes of procedure in the Supreme Court is regulated by Ord. LXIV., which provides that 'a Court or a Judge may enlarge or abridge the time appointed by the Rules of Court, or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed' (r. 6).

Time bargains, contracts for the sale of a certain amount of stock at a certain price at a future day, sometimes called *puts and refusals*, which see; and see also STOCKBROKER.

Time immemorial, from time whereof the memory of man is not to the contrary. See MEMORY, TIME OF LEGAL.

Timocracy [Gk.], an aristocracy of property.

Timores vani sunt æstimandi qui non cadunt in constantem virum. 7 Co. 17.—(Fears which do not assail a resolute man are to be accounted vain.)

Tinel le roy, the king's hall, wherein his servants used to dine and sup.—13 *Rich II.* st. 1, c. 3.

Tineman, or **Tienman**, a petty officer in the forest, who had the care of vert and venison at night, and other servile duties.—*Cowel.*

Tinet, brushwood and thorns.—*Cowel.*

Tinewald, the ancient parliament or annual convention of the people in the Isle of Man.

Tinkermen, fishermen who destroyed the young fry on the river Thames, by nets and unlawful engines.—*Cowel.*

Tinpenny, a tribute paid for the liberty of digging in tin mines.—*Cowel.*

Tinsel of the Feu, the loss of an estate held in feu in Scotland, from allowing two years' feu-duty to remain unpaid.—*Bell's Scotch Law Dict.*

Tippling Act, 24 Geo. II. c. 40, s. 12, by which no person may maintain any action for any debt 'for any spirituous liquors, unless such debts shall have really been contracted at one time to the amount of 20*s.*'

By 25 & 26 Vict. c. 38, the above enactment is repealed, so far only as relates to spirituous liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser

thereof in quantities not less at any one time than a reputed quart.

By the County Courts Act, 1888, s. 182, replacing s. 4 of the County Courts Act, 1867, no action may be brought in any court to recover any debt alleged to be due for beer, cider, or perry, consumed on the premises where sold.

Tipstapps, or **Tipstaves**, constables attending courts. See 5 & 6 Vict. c. 22, s. 23; and 11 & 12 Vict. c. 7, s. 5.

Tithe Commissioners for England and Wales. This board is consolidated with that of the Inclosures Commissioners, and that of the Copyhold Commissioners.—14 & 15 *Vict.* c. 53; continued by 21 & 22 *Vict.* c. 53, and other Acts. See LAND COMMISSIONERS.

Tithe-free, exempted from the payment of tithes.

Tithe Rent Charge. A charge on land, substituted by commutation for that charge on the produce of the land for the benefit of the church, which was called tithe from being the *tenth* part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants; the first species being usually called *prædial*, the second *mixed*, the third *personal*.

This commutation has been effected by a procedure set on foot by the Tithe Commutation Act, 1836, 6 & 7 Wm. IV. c. 71, amended by subsequent Acts. See *Chit. Stat.* vol. 6, tit. '*Tithes*'; Extraordinary Tithe Redemption Act, 1886, 49 & 50 Vict. c. 54; Tithe Act, 1891, 54 Vict. c. 8. The amount to be paid is annually adjusted, according to the price of corn.

The commutation has been effected in one of two ways; either by a voluntary parochial agreement, confirmed by the commissioners, or by the compulsory award of the commissioners. The value, either voluntarily agreed upon or awarded by the commissioners, is considered as the amount of the total rent-charge to be paid in respect of the tithes in that parish, and to be afterwards apportioned among the lands of that parish, having regard to their average tithable produce and productive quality; and such lands are absolutely discharged from the payment of all tithes, and, instead thereof, have become subject to their portion of the rent-charge, thenceforth payable to the former tithe-owner, by two half-yearly payments, fluctuating according to the price of corn. An advertisement is inserted by authority in the *London Gazette*, in January in every year, stating the average price of wheat, barley, and oats for seven years, ending on the Thursday before Christmas then next preceding; every rent-charge then is deemed of the value of as many bushels of wheat, barley, and oats in equal quantities, as it would have been competent to purchase according to the prices contained in such advertisement; and after every first of January it varies so as always to consist of the price of the same quantities, according to the advertisement then next preceding.

A tithe rent-charge varies in amount, and no person being personally liable to its payment, it differs from a rent-charge generally. By the Tithe Act, 1891, it is payable by the landowner to the tithe-owner. Every contract between landowner and occupier, made *after that Act*, for payment of it by the occupier is void, and the occupier has ceased to be bound by any such contract made *before that Act*, being liable, however, to repay to the landowner such sum as the landowner has properly paid on account of tithe rent-charge by the tithe-owner. When the rent-charge was in arrear for twenty-one days, the remedy was, until 1891, in every case by distress on the land; but the Tithe Act, 1891, 54 Vict. c. 8, has effected a great change in this respect. By that Act, in the ordinary case of land being let by the owner to a tenant, the remedy of distress by the tithe-owner is extinguished, and recovery through a receiver appointed by the County Court of the district is substituted for it, except where the land is occupied by the landowner, in which case an officer of the Court may distrain for it. The landowner also, in case of a contract before the passing of the Act (March 26th, 1891), binding the occupier to pay tithe, may recover by distress on the occupier any sum he may have paid the tithe-owner on account of tithe. By the same Act (s. 8), a remission of tithe rent-charge for any one year exceeding two-thirds of the annual value of the land out of which it issues, may be obtained from the County Court, as in the case of landlord and tenant.

Tithe Rent-charge Recovery Rules, 1891. The Rules for the recovery of tithe rent-charge, framed by the Lord Chancellor under s. 3 of the Tithe Act, 1891, 'after consultation with the Rule Committee of County Court Judges.' There are 58 Rules and 35 Forms.

Tithing, a Saxon subdivision of the hundred, replacing the name of township as the unit of local administration (see *Stubbs's Constitutional History*, vol. 1, p. 85) in some parts of England, the name still existing in Somersetshire and Wiltshire; the number or company of ten men with their families, knit together in a society, all of them being

bound to the king for their peaceable and good behaviour, the chief of whom was called the tithing-man.—*Cowel.* See TOWNSHIP.

Tithing-man, a peace-officer, an under constable. See preceding title.

Tithing-penny. See TEDING-PENNY.

Title, a general head, comprising particulars, as in a book; 2, an appellation of honour or dignity; 3, a claim of right. It is the means whereby an owner possesses his property justly, or the evidence of ownership.

As to title to realty:—

There are several stages and degrees requisite to form a complete title to lands and tenements.

The lowest and most imperfect degree of title consists in the mere naked possession, or actual occupation of the estate, without any apparent right or any shadow of pretence of right to hold and continue such possession.

The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is in another.

The last step is the right of property (*jus proprietatis*), without either possession or even the right of possession. This is frequently styled mere right (*jus merum*), and the estate of the owner is in such cases said to be totally devested and put to a right.

The principal circumstances to be attended to in drawing conclusions as to title are—

1. That there be a deduction of title to the legal state for a period formerly of sixty years, but now in ordinary circumstances of forty years (see the Vendor and Purchaser Act, 1874); 37 & 38 Vict. c. 71, s. 1.

2. That the legal estate can be obtained free from any equities affecting it;

3. That all the particular estates either are determined, or can be conveyed to the purchaser or his trustee;

4. That no reversion or remainder is outstanding in the Crown, or in any stranger; and

5. That there are not any incumbrances by way of condition, or limitation over, mortgages, Crown debts, judgments, statutes, decrees, *lites pendentes*, annuities, rents, legacies, portions, charges, dower, courtesy, forfeitures (now abolished for treason or felony by 33 & 34 Vict. c. 23), leases, etc., or any outstanding term of years which the purchaser cannot procure either to be extinguished or assigned.

There are at least three species of doubtful titles: (1) where the title is doubtful by reason of some uncertainty in the law itself; (2) where the doubt is as to the application of some settled principle or rule of law; and (3) where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved.

It may be safely asserted that there in no defect which more frequently renders it impossible for a person who has a good title to prove it, and enables a party who has a bad title fraudulently to exhibit a colourable ownership, than the want of evidence of the identity of the parcels.

A good title is produced whenever it appears that upon certain acts being done, the legal and equitable estates in the property contracted for will become vested in the purchaser, those acts being such as the vendor can either himself perform or cause to be performed.

The title to things personal may be acquired or lost by: (1) Occupancy. (2) Invention. (3) Prerogative. (4) Forfeiture. (5) Custom. (6) Succession. (7) Marriage. (8) Judgment. (9) Gift or grant. (10) Contract. (11) Bankruptcy or insolvency. (12) Testament. (13) Administration. See DECLARATION OF TITLE.

Title, Covenants for. In every conveyance made on or after the 1st January, 1882, certain 'covenants for title' (being for the most part usually *expressed* in the conveyance before that date), of which the following is an abstract, are *implied* by virtue of the 7th section of the Conveyancing Act, 1881, 44 & 45 Vict. c. 41:—

(A) In a conveyance for valuable consideration (other than a mortgage) by a person *expressed* to convey as *beneficial owner*:—That the person conveying has the right to convey:—That the person to whom the conveyance is made shall 'quietly enjoy' the subject matter of the conveyance without disturbance by the person conveying, or any person claiming by, through, under, or in trust for the person conveying:—That the subject matter of the conveyance is discharged from encumbrances except as expressly mentioned in the conveyance:—And that the person conveying, and every person claiming through him otherwise than by purchase for value, will execute all such 'further assurances' for more perfectly assuring the subject matter of the conveyance to the person to whom it is made, as from time to time may reasonably be required.

(B) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the *further* covenant, by a person *expressed* to convey as *beneficial owner*:—That the lease creating the term is valid, unforfeited, unsurrendered, and in nowise become void or voidable.

(C) In a conveyance by way of mortgage

by a person *expressed* to convey as *beneficial owner*, the same covenants for right to convey and quiet enjoyment as in (A), with the addition that if default be made in payment of the money intended to be secured or interest thereon, the person to whom the conveyance is made may enter upon and enjoy the subject matter of the conveyance, and enjoy the same with the benefit of the same covenants for 'freedom from incumbrance' and 'further assurance' as in (A).

(D) In a conveyance by way of mortgage of leasehold property by a person *expressed* to convey as *beneficial owner*, the same covenants for validity of the lease as in (B), and also a covenant that the person conveying or the persons deriving title under him will pay the rent and perform the covenants under the lease, and will keep the person to whom the conveyance is made indemnified against actions for non-payment of rent or breach of covenant.

The same section of the Act also implies a limited covenant for further assurance in a conveyance by way of settlement by a person *expressed* to convey as *settlor*, and against incumbrances in a conveyance by a trustee or mortgagee, *expressed* to convey as *trustee or mortgagee*.

Title of Clergymen (to orders), some certain place where they may exercise their functions; also, an assurance of being preferred to some ecclesiastical benefice.—2 *Steph. Com.*

Title to Lands, Document of. By 24 & 25 Vict. c. 96, 'Whosoever shall steal, or shall, for any fraudulent purpose, destroy, cancel, obliterate, or conceal the whole or any part of any *document of title to lands*, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three (now five) years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement' (s. 28).

The term, 'document of title to lands,' includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of real estate (s. 1).

Title deeds, the muniments or evidences of ownership. See preceding title.

Titles (Ecclesiastical). By the Act 14 & 15 Vict. c. 60, the assumption of the title of archbishop or bishop of a pretended province or diocese, or archbishop or bishop of a city, place, or territory in England or Ireland, not being the see, province, or diocese of an archbishop or bishop, recognised by law, was prohibited under penalties; but this Act (which was passed after great public excitement, in consequence of the division of England into Roman Catholic dioceses by Pope Pius IX., under Cardinal Wiseman, as Archbishop of Westminister) was never enforced, and has been repealed by the 34 & 35 Vict. c. 53.

Titulars of Erection. See LORDS OF ERECTION.

Toalia, a towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.—*Cowel.*

Tobacco Duties Act, 26 Vict. c. 7.

Tobago and Trinidad. See 11 & 12 Vict. c. 22; 18 & 19 Vict. c. 107.

Toft, a place where a messuage has stood. —*Cowel*; 2 *Br. & Had. Com.* 17.

Toftman, the owner or possessor of a toft.

Togati, Roman advocates.

Token, a sign of the existence of a fact; 2, private money.

Toleration Act, 1 W. & M. st. 1, c. 18, confirmed by 10 Anne c. 2, by which all persons dissenting from the Church of England (except Papists and persons denying the Trinity), were relieved from such of the Acts against Nonconformists as prevented their assembling for religious worship according to their own forms, or otherwise restrained their religious liberty, on condition of their taking the oaths of allegiance and supremacy, and subscribing a declaration against transubstantiation; and in the case of dissenting ministers, subscribing also to certain of the Thirty-nine Articles. The clause of this Act, which excepted persons denying the Trinity from the benefits of its enactments, was repealed by 53 Geo. III. c. 160.—4 *Br. & Had. Com.* 67.

Toll [fr. *tollo*, Lat.], to bar, defeat, or take away, as to toll an entry, is to deny and take away the right of entry. See 3 & 4 Wm. IV. c. 27.

Toll [fr. *tol*, Sax. and Dut.; *told*, Dan.; *toll* Wel.; *taille*, Fr.], has two significations:—

(1) A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market.

(2) A tribute or custom paid for passage. —*Cowel.* For its importance in railway law see ss. 3, 86 and 92 of the Railways Clauses Act, 1845.

Tollage, any custom or imposition.

Tollbooth, a prison, a custom-house, an exchange; also the place where goods are weighed.

Tolldish, a vessel by which the toll of corn for grinding is measured.

Toller, one who collects tribute or taxes.

Tollgatherer, the officer who takes or collects toll.

Toll-thorough, when a town prescribes to have toll for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it.—*Com. Dig.*, tit. '*Toll*' (*C*).

Toll-traverse, or **Travers,** toll taken for every beast driven across a man's land. He may prescribe and distrain for it *viâ regiâ.*—*Cro. Eliz.* 710.

Tolsester, an old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.—*Cowel.*

Tolsey, the same as tollbooth, which see. Also, a place where merchants meet; a local tribunal, usually spelt 'tolzey,' for small civil causes held at the Guildhall, Bristol.

Tolt, a writ whereby a cause depending in a court-baron was taken and removed into a county-court.—*O. N. B.* 4.

Tolta, wrong, rapine, extortion.—*Cowel.*

Ton, 20 cwts. of 112 lbs. avoirdupois each.

Tonnage, the estimated number of tons burden that a ship will carry. See 17 & 18 Vict. c. 104, ss. 20, 21.

Tonnage Duties, those imposed on wines imported, according to a certain rate per ton. This, with poundage, was formerly granted to the sovereign for life by Acts of Parliament, usually passed at the beginning of each reign; but by 9 Anne c. 6, 1 Geo. I. c. 12, and 3 Geo. I. c. 7, they were made perpetual, and mortgaged for the public debt. See 1 *Br. & Had. Com.* 376.

Tontine, a life-annuity, or a loan raised on life-annuities, with benefit of survivorship. The term originated from the circumstance that Lorenzo Tonti, an Italian, invented this kind of security in the seventeenth century, when the governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV., who first adopted the plan in France. A loan was obtained from several individuals on the grant of an annuity to each of them, on the understanding that, as deaths occurred, the annuities should continue payable to the survivors, and that the last survivor should take the whole. This mode of raising money has more than once been adopted by the English Government (see e.g., 29 Geo. III. c. 41, amended by 30 Geo. III. c. 45), and also for the purpose of private speculations, but it has almost entirely fallen into disuse, and it may be doubted whether it is not prohibited by the Lottery Acts. As to the formation of such a scheme, see *Stone's Benefit Build. Soc.* 78.

Tools, Exportation of. This was formerly a criminal offence, but it is no longer so since the restrictions upon trade are removed.—4 *Steph. Com.*

Tor, Toira, or **Tyrra,** a mount or hill.

Tora Garas Huk, an annual payment or rent-charge of a fixed nature on a village *jampa*, made by the Bombay Government through their collectors in the different *zillahs* of Guzerat.—*Indian.*

Torrens' Act, the Artisans, and Labourers' Dwellings Act, 1868. See LABOURERS' DWELLINGS.

Tort [fr. *tortus*, Lat.], injury or wrong. Actions are divided into actions in contract and actions in tort, and a mixed class consisting of torts arising out of contract. Consult *Addison on Torts*, 6th ed.

Tort à le ley est contraire. Co. Litt. 158.—(Tort is contrary to the law.)

Tortfeasor, a wrongdoer; a trespasser.

Tortious, anything done by wrong; an act involving a forfeiture of property. See INNOCENT CONVEYANCES.

Torture. See RACK.

Tory, originally a nickname for the wild Irish in Ulster. An Act of the Irish Parliament for 'better suppressing tories, robbers, and rapparees,' 7 Wm. III. c. 21, is repealed by the Statute Law Revision Act, 1878. Afterwards given to, and adopted by, one of the two great parliamentary parties which have alternately governed Great Britain since the Revolution in 1688. See WHIG.

Totidem verbis [Lat.] (*in so many words*).

Toties quoties (*as often as occasion shall arise*).

Totted, a good or separate debt to the Crown.—*Cowel.*

Totum præfertur unicuique parti. 3 Co. 41.—(The whole is preferable to any single part.)

Toujours et encore presz [Nor.-Fr.] (*always and still ready*).

Tourn, the sheriff's tourn or rotation. See SHERIFF'S TOURN.

Tout temps presz et encore est [Nor.-Fr.] (*always was and is at present ready*).

Towage, money paid for towing.

Town [fr. *tun*, Sax.], a tithing or vill; any collection of houses larger than a village. See 1 *Br. & Had. Com.* 136.

Towns are either corporate, that is, having a corporation to transact their business, or not corporate. Some have the liberty or franchise of a market, others have not. Towns are usually divided into cities, boroughs, or common towns.

Town Clerk, a fit person (usually, but not necessarily, a solicitor) from time to time appointed by the council of a municipal borough to manage their legal business. He may not be a councillor, and holds office

during the pleasure of the council. In case of his illness or absence, the council may appoint a deputy.—*Municipal Corporations Act*, 1882, 45 & 46 *Vict.* c. 50, s. 17.

Town Council, the council of a municipal borough, elected by the burgesses to act for the corporation. See MUNICIPAL CORPORATION.

Town Crier, an officer in a town whose business it is to make proclamations.

Town Hall, the hall where the public business of a town is transacted, and on or near the door of which public notices are fixed.

Town Police Clauses Act, 1847, 10 & 11 Vict. c. 89. The provisions of this Act as to 'obstructions and nuisances in the streets,' 'fires,' 'places of public resort,' 'hackney carriages,' and 'public bathing,' are, 'for the purpose of regulating such matters in urban districts,' incorporated with the Public Health Act, 1875, by s. 171 of that Act.

Township, the district of a town, tithing, or vill, which three are of the same signification in law.—*Steph. Com.*, vol., 1, *Introduction.* The township is the unit of the early constitutional machinery in England (*Stubbs's Constitutional History of England*, vol. 1, p. 82), and the boundaries of the parish, and the township or townships with which it coincides are generally the same (*Ib.*), 'parish' being properly the ecclesiastical term, and 'township' the civil one.

Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34. The provisions of this Act as to 'naming streets and numbering houses,' 'improving line of streets,' etc., 'ruinous and dangerous buildings,' and 'precautions during construction and repair of sewers, streets, and houses,' are, 'for the purpose of regulating such matters in urban districts,' incorporated with the Public Health Act, 1875, by s. 160 of that Act.

Trade [fr. *trutta*, Ital.], traffic; commerce; exchange of goods for other goods, or for money. All wholesale trade, all buying in order to sell again by wholesale may be reduced to three sorts: the home trade, the foreign trade of consumption, and the carrying trade.—2 *Smi. Wealth of Nat.*, b. 2, c. 5.

Offences against trade are—

(1) Smuggling.
(2) Frauds by bankrupts.
(3) Cheating.
(4) Monopoly.

Trade Marks. The Merchandise Marks Act, 1862, 25 & 26 Vict. c. 88, made it a misdemeanour to forge or counterfeit any trade-mark (defined by the 1st section), or falsely to apply any such trade-mark, with intent to defraud, to any article, or to any wrapper, etc., in which any commodity was sold (ss. 2, 3); and by the Trade Marks Registration Act, 1875, 38 & 39 Vict. c. 91, a register of trade-marks was established under the superintendence of the Commissioners of Patents; and it was provided that after the 1st of July, 1876 [a time afterwards extended till 30th of June, 1878, by Order in Council under 40 & 41 Vict. c. 37], a person should not be entitled to institute any proceeding to prevent the infringement of any trade-mark, as defined by the Act, until such trade-mark was registered in pursuance of the Act (s. 1). The Act of 1862 was repealed and re-enacted with amendments by the Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28 (further amended by the Merchandise Marks Act, 1891), and the Act of 1875 by the Patents, Designs, and Trade Marks Act, 1883, 46 & 47 Vict. c. 57.

Trade, Restraint of. See RESTRAINT OF TRADE.

Trader, one engaged in merchandise or commerce. See BANKRUPT. As to who were traders within the meaning of the repealed Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, see schedule 1 of that Act.

Trades Unions. The Act 30 & 31 Vict. cc. 8, 74, provided for facilitating the proceedings of a commission appointed by the Queen to inquire into and report on the organisation and rules of trades unions, and other associations of employers and workmen. The Trades Union Act, 1871, 34 & 35 Vict. c. 31, provides that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed unlawful so as to render any member of the union liable to criminal prosecution, or as to render void or voidable any agreement or trust. The Act of 1871, which was amended as to insurance of children's lives, the membership of minors, the local jurisdiction of justices, and other matters, by the Trade Union Act Amendment Act, 1876, 39 & 40 Vict. c. 22, provides for the registration of Unions by the Registrar of Friendly Societies, but excludes the operation of the Friendly Societies Acts, the Industrial and Provident Societies Acts, and the Companies Acts. By s. 6 any seven or more members may register, but the registration is void if any of the purposes of the union are unlawful. See further titles MASTER AND SERVANT, and THREATS.

Traditio loqui facit chartam. 5 Co. 1.—(Delivery makes the deed speak.)

Tradition, the act of handing over; delivery.

Trailbaston, Court of, erected by Edward I., by the statute of Ragman. This was a commission of oyer and terminer of an unusual kind, and was issued in the fulness of zeal

for the correction of public disorders. The rigour, however, with which this was executed creating some discontents, it was thought expedient, in course of time, to discontinue it.—2 *Reeves*, p. 277.

Trainbands, the militia; the part of a community trained to martial exercises.

Training military, without full authority, illegal, by 60 Geo. III. and 1 Geo. IV. c. 1.

Traitor [fr. *traditor*, Lat.], one who being trusted betrays; one guilty of treason. See TREASON.

Traitorously, in a manner suiting traitors; perfidiously; treacherously.

Tramways, rails for conveyance of traffic along a road not owned, as a railway is, by those who lay down the rails and convey the traffic. The construction and regulation of tramways is provided for by 33 & 34 Vict. c. 78. As to the metropolis, see also 35 & 36 Vict. c. 43. See also as to Ireland, 23 & 24 Vict. c. 152; 24 & 25 Vict. c. 102; and 34 & 35 Vict. c. 114; and as to Scotland, 24 & 25 Vict. c. 69.

Transcript, a copy; anything written from an original.

Transcriptio pedis finis levati mittendo in Cancellarium, a writ which certified the foot of a fine levied before justices in eyre, etc., into the Chancery.—*Reg. Orig.* 669.

Transcriptio recognitionis factæ coram justiciariis itinerantibus, etc., an old writ to certify a cognizance taken by justices in eyre.—*Reg. Orig.* 152.

Transfer, to convey; to make over to another; the document by which property, as shares in public companies, is made over by one to another. For power to transfer shares, see s. 14 of the Companies Clauses Act, 1845, 8 Vict. c. 16, and s. 22 and Art. 8 of Table A. of the Companies Act, 1862, 25 & 26 Vict. c. 89. A forged transfer is a nullity. See under title FORGERY.

Transfer of cases. By the Judicature Act, 1873, s. 35, and R. S. C. 1883, Ord. X., power is given to transfer causes from one Division of the High Court to another.

Transfer of Land Acts. To facilitate the proof of title to, and the conveyance of, real estates, the 25 & 26 Vict. c. 53 was passed. The Act was confined to England, and divided into four parts. Part I., headed 'As to the Registration of Real Estates and the Title thereto,' established a registry, which was to be confined to a registration of the titles to estates of freehold tenures, and leasehold estates in freehold lands.

In 1875 a similar Act was passed 'to simplify titles and to facilitate the transfer of land in England,' under the short title of The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), which came into operation on the 1st January, 1876. By s. 125 it is provided that application for the registration of an estate under the Act 25 & 26 Vict. c. 53 shall not for the future be entertained.

But neither under this Act, nor under the Act of 1862, has any appreciable number of titles been registered, and this Act has 'become, for all practical purposes, a dead letter.' See *Report of Select Committee of House of Commons on Land Titles and Transfers*, 1879. New Rules for the Land Registry were issued at the close of 1888.

Transferunter dominia sine titulo et traditione, per usucapationem, scil. per longam continuam et pacificam possessionem. Co. Litt. 113.—(Rights of dominion are transferred without title or delivery by usucaption, to wit, long and quiet possession.)

Transgressio est cum modus non servatur nec mensura, debit enim quilibet in suo facto modum habere et mensuram. Co. Litt. 37.—(Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.)

Transgressione, a writ or action of trespass.

Transire, a warrant or permit from the custom-house to let goods pass.

Transit terra cum onere. Co. Litt. 231 a.—(Land passes subject to any burden affecting it.) Consult *Broom's Leg. Max.*, 5th ed., 495, 706.

Transitory actions were those in which the venue might be laid in any county.

Transitus. See STOPPAGE IN TRANSITU.

Translation, the removal from one place to another; the removal of a bishop to another diocese. As to copyright in translated books, see COPYRIGHT.

Transportation, the banishing or sending away a criminal into another country; also, the carriage of property.

This punishment was introduced in the reign of Queen Elizabeth, 39 Eliz. c. 4. The word is first used in the 13 & 14 Car. II. c. 23. The punishment was chiefly regulated by 5 Geo. IV. c. 84. Returning from transportation before the expiration of the term of punishment was an offence against public justice, and punishable by transportation for life.—4 & 5 *Wm. IV.* c. 67. This punishment has been superseded by penal servitude under 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3. See PENAL SERVITUDE.

Trans-shipment, the taking of the cargo out of one ship, and loading another with it.

Transumpts. An action of transumpt is an action competent to any one having a partial interest in a writing, or immediate

use for it, to support his title or defences in other actions. It is directed against the custodier of the writing, calling upon him to exhibit it, in order that a transumpt, i.e., a copy, may be judicially made and delivered to the pursuer. The action now of very rare occurrence.—*Bell's Scotch Law Dict.*

Traveller. Under the Licensing Acts, 1874 (see INTOXICATING LIQUORS), intoxicating liquors may not be sold at certain hours except to '*bonâ-fide* travellers,' and by s. 10 of that Act, a person is not to be deemed a '*bonâ-fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor'; but although a man is not a *bonâ-fide* traveller unless he has travelled the three miles, he does not necessarily become so by merely having travelled the three miles. The expression *bonâ-fide*, which appears to owe its origin to the Scotch Forbes-Mackenzie Act, 16 & 17 Vict. c. 67, seems merely intended to point the distinction between those who travel to drink, and those who drink to travel. See *Lely and Foulkes' Licensing Acts*, 3rd ed., p. 118.

Traverse, the denial of some matter of fact alleged in a pleading, whether in an action or in criminal prosecutions. See PLEADING; STATEMENT OF DEFENCE.

Traverse (*v.a.*), to deny.

Traverse of an office, proof that an inquisition made of lands or goods by the escheator is defective and untruly made.

Traverser, in Ireland, a prisoner.

Traversing indictment, postponing the trial of it.

The 14 & 15 Vict. c. 100, s. 16, repeals 60 Geo. III. and 1 Geo. IV. c. 4, as to the traverse of indictments in cases of misdemeanour, and provides, by s. 27, that no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery; but if the Court, upon the application of the person so indicted or otherwise, thinks that he ought to be allowed a further time to prepare for his defence or otherwise, such Court may adjourn the trial to the next session, upon such terms as to bail, etc., as shall seem meet, and may respite the recognizances of the prosecutor and witnesses; the prosecutor and witnesses to be bound to attend and prosecute and give evidence, without entering into fresh recognizances.

Traversing note. In equity a plaintiff, after an appearance had been entered, might, in default of answer to interrogatories which had been filed for the examination of the defendant, proceed with his cause by filing a traversing note as to such defendant. A traversing note appears in practice to have been required in all cases where a defendant had been served with interrogatories to answer, and had not answered, before a certificate to set down the cause could be obtained. It was, however, unnecessary to file a traversing note in order to set down a cause on motion for decree, although interrogatories might have been filed for the plaintiff if the time for answering such interrogatories had expired, and no replication had been filed.—1 *Dan. Ch. Pr.*, 5th ed.

Traversum, a ferry.—*Mon. Angl.*

T. R. E., the initials of the phrase *tempore regis Edwardi.*

Treacher, Trechetour, or **Treachour**, a traitor.

Treadmill, an instrument of prison discipline. It is composed of a large revolving cylinder, having ledges or steps fixed round its circumference; the prisoners walk up these ledges, and their weight moves the cylinder round.

Treason [fr. *trahir*, Fr., to betray; *proditio*, Lat.], or *leze-majesty*, an offence against the duty of allegiance, and the highest known crime, for it aims at the very destruction of the commonwealth itself. Five species of treason are declared by 25 Edw. III. st. 5, c. 2, as follows:—

(1) When a man doth compass or imagine the death of our lord the king (a queen regnant is within these words), of our lady his queen, or of their eldest son and heir.

(2) If a man do violate the king's companion (i.e., his wife), or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir.

(3) If a man do levy war against our lord the king in his realm. (After a battle has taken place, it is termed *bellum percussum*; before it, *bellum levatum.*)

(4) If a man be adherent to the king's enemies in his realm, giving to them aid or comfort in the realm or elsewhere.

(5) If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

Treason must be prosecuted within three years from its commission, if committed within the realm, except in the case of a designed assassination of the sovereign.—7 & 8 *Wm. III.* c. 3. Information for open and advised speaking must have been given within

six days after its utterance, and a warrant for the apprehension of the offender must have been issued within ten days after, and within two years from April 22nd, 1848.—11 *Vict.* c. 12, s. 4.

The punishment of a convicted traitor is death by hanging, the ignominious adjuncts of drawing on a hurdle and quartering, etc. (as to which see 54 Geo. III. c. 146), having been abolished by 33 & 34 Vict. c. 23, s. 31. By 5 & 6 Vict. c. 51, treason consisting in the imagining bodily harm to Queen Victoria, and misprision of treason, in that kind is triable just as murder is; but the sentence is to be as for high treason. By the same Act, firing at the present Queen or striking her is punishable with whipping.

Forfeiture and attainder for treason has now been abolished by the 33 & 34 Vict. c. 23.

Treason-Felony. By 11 & 12 Vict. c. 12, s. 3, 'If any person shall, within the United Kingdom or without, compass to depose the Queen, or to levy war against her, within any part of the United Kingdom, in order to compel her to change her counsels, or in order to intimidate or overawe parliament, or to stir any foreigner with force to invade the United Kingdom, or any other Her Majesty's dominions, and such compassings shall express by writing, or by open or advised speaking, or by any overt act, he shall be guilty of felony.

Treasurer, one who has the care of money or treasure.

There was a Lord High Treasurer of England, but the duties are now executed by commissioners. The Prime Minister generally fills the office of First Lord of the Treasury.

Treasurer of a county, he that keeps the county stock. As to his duties to receive and make payments, and keep books and account, see 12 Geo. II. c. 29, and 15 & 16 Vict. c. 81, s. 50, *Chitty's Statutes*, vol. ii., tit. "County Rate"; and see too *Local Government Act*, 1888, s. 80.

Treasurer's remembrancer, he whose charge was to put the Lord Treasurer and the rest of the judges of the Exchequer in remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland.

Treasure-trove [*thesaurus inventus*, Lat.], money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound; in which case it belongs to the Crown. Bracton defines it, *vetus depositio pecuniæ*. Concealing treasure-trove is punishable by fine or imprisonment.

Coroners have jurisdiction to inquire of treasure-trove, under s. 36 of the Coroners Act, 1887.

As to the Roman law on this subject, see *Sand. Just.*, 7th ed., 111.

Treasury, the place where treasure is deposited. (2) The department of state which manages the Royal Public Revenue. The Lord High Treasurer is properly the head of this department; but, in practice, the functions of this great official are discharged by several commissioners. The chief of these is called First Lord; and he is, by custom, the head of the Cabinet (see CABINET), and of the whole executive, for which he is responsible in every department. The Chancellor of the Exchequer is the second commissioner, and there are three others. There are also three secretaries to the treasury.

Treasury Chest Fund. A fund originating in the unusual balances of certain grants of public money, and which is used for banking and loan purposes by the Commissioners of the Treasury. Its amount was limited by 24 & 25 Vict. c. 127, and has been further reduced to one million pounds, the residue being transferred to the Consolidated Fund, by 36 & 37 Vict. c. 56; and see CONSOLIDATED FUND.

Treasury Solicitor. Constituted a Corporation Sole by 'Treasury Solicitor Act, 1876,' 39 & 40 Vict. c. 18.

Treating. The temporary Corrupt Practices' Prevention Act, 1854, 17 & 18 Vict. c. 102, s. 4, amended by the Corrupt Practices Act, 1883, extended to municipal, School Board, and other elections by the Corrupt Practices Act, 1884, and continued from time to time by Expiring Laws' Continuance Acts, enacts that every candidate who corruptly by himself, or by or with any person or otherwise, before, during, or after any parliamentary election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to giving or providing, or pays any expenses for meat, drink, entertainment, or provision, for any person, in order to be elected, or for being elected, or for corruptly influencing any person to give or refrain from giving his voice, or on account of having voted or refrained from voting, or being about to vote or refrain from voting, is guilty of treating, and forfeits 50*l.* to any informer with costs. Every voter who corruptly accepts any meat, drink, entertainment etc., becomes incapable of voting at such election, and his vote is void. As to the origin of treating at elections, see 3 *Hallam's Const. Hist.* c. 21, p. 302 n. (*g.*)

Treaty, negotiation, act of treating, a compact between nations. It is the sovereign's

prerogative to make treaties, leagues, and alliances with foreign states and princes.

Treble costs: Treble damages. See DOUBLE OR TREBLE COSTS; DOUBLE OR TREBLE DAMAGES.

Trebucket, a tumbrel, castigatory, or cucking-stool. See CASTIGATORY.

Treet [fr. *triticum*, Lat.], fine wheat.—51 *Hen. III.*

Tremagium, Tremesium, Tremissium, the season or time of sowing summer-corn, being about March, the third month, to which the word may allude.—*Cowel.*

Tremellum, a granary.

Tresayle, an abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

Trespass [fr. *transgressio*, Lat.], any transgression of the law, less than treason, felony, or misprision of either.

The action of trespass lies where a trespass has been committed either to the plaintiff's person or property. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands. —*Steph. Plead.*, 7th ed., 11, 37, 154. As to trespass on the case, see CASE.

Trespass, quare clausam fregit. See QUARE CLAUSAM FREGIT.

Trespasser, one who commits a trespass.

Trestonare, to turn or divert another way. —*Cowel.*

Tret. See ALLOWANCE.

Trethings [fr. *trethu*, Welsh, to tax], taxes, imposts.

Treyts, taken out or withdrawn, as withdrawing or discharging a juror.

Trial, the examination of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land.—1 *Inst.* 124.

At a trial by jury now, as formerly in the Common Law Courts, the cause is called on, or the prisoner arraigned, before the jury is sworn. The parties may then challenge the jury. (See CHALLENGE.) The pleadings are then (in civil causes and misdemeanours) opened by the junior counsel for the plaintiff; and if it appear that the burden of proof is on the plaintiff, his senior counsel states the case to the jury; after which the witnesses for the plaintiff are examined by his counsel, the cross-examination being generally conducted by the senior counsel for the defendant. If the defendant's counsel object to any question or any document, all the defendant's counsel are entitled to be heard on the objection, and all the plaintiff's counsel on the other side, and the senior counsel for the defendant in reply; and so if the plaintiff's counsel object *mutatis mutandis.* If the plaintiff have evidence to rebut the issues of which the burden of proof lies on the defendant, he may either produce it at the same time as his other evidence, or reserve it until after the defendant has given affirmative evidence on the issue. At the end of the plaintiff's evidence, the defendant's counsel declares whether he will call witnesses; and if he does not, the plaintiff's senior counsel sums up his evidence, and the defendant's senior counsel next addresses the jury, and the judge sums up. If the defendant's counsel calls evidence, he immediately opens his case to the jury, and the witnesses are called and examined as in the plaintiff's case. The plaintiff is, in general, entitled to call witnesses to rebut the evidence of the defendant, if he has not already given all his evidence, which is more generally the case. Then the defendant's senior counsel sums up, and the senior counsel for the plaintiff replies upon the whole case. The judge then sums up. By consent of both parties the verdict may be taken by the associate in the absence of the judge; but in a criminal trial he must be present.

In a criminal trial the effect of the pleadings is stated to the jury by the clerk of the court, except in a case of misdemeanour, where that is done by counsel as in a civil cause. In other respects the order of proceeding is the same. After a conviction for misdemeanour the counsel for the defendant may address the Court in mitigation, and the counsel for the prosecution in aggravation, of his sentence. Sentence may be deferred to a future day. Consult *Chit. Arch. Prac.*, as to trial in civil causes; and *Arch. Crim. Prac.* as to trial in criminal cases.

In the Chancery Division of the High Court when the trial is by affidavit, it is commonly called a hearing, and all the counsel on both sides are heard in order, the senior counsel for the party first heard (plaintiff or petitioner) being heard in reply. When an issue is tried by oral evidence before the Court itself, the Common Law practice is followed. The trial in the ecclesiastical courts mostly resembles the former course of an ordinary trial in chancery.

The rules with regard to trials in the High Court of Justice are to be found in R. S. C. 1883, Ord. XXXVI.

Trial at Bar. See BAR.

Tribunal, the seat of a judge, a court of justice.

Tribute, a payment made in acknowledgment; subjection.

Tricesima, an ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1*d.* rent for their houses to the bishop, who was lord of the manor.—*Lib. Nik. Heref.*

Tridingmote, the court held for a triding or trithing.—*Cowel.*

Triennial Act, 6 W. & M. c. 2, which provides that there shall be no longer *intermissions* of Parliament than three years, following, in this respect, 16 Car. II. c. 1, which repealed another Triennial Act more properly so called, 16 Car. I. c. 1. This other Triennial Act limited the *duration* of Parliament to three years. See also SEPTENNIAL ACT.

Triens, a third part; also dower.

Triers. See TRIORS.

Trinepos, the male descendant in the sixth degree in direct line.—*Civ. Law.*

Trinity House, a society at Deptford Strond, incorporated by Henry VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, lighthouses, buoys, etc.

The Trinity House, by 17 & 18 Vict. c. 104, appoints and licenses pilots for the following limits:—(1) 'The London District,' comprising the waters of the Thames and Medway, as high as London Bridge and Rochester Bridge, and the seas and channels leading thereto or therefrom, as far as Orfordness to the north, and Dungeness to the south, but so that no pilot shall be licensed to conduct ships both above and below Gravesend. (2) 'The English Channel District,' comprising the seas between Dungeness and the Isle of Wight. (3) 'The Trinity House Outports Districts,' comprising any pilotage district for the appointment of pilots, within which no particular provision is made by Act of Parliament or charter. And, in general, the employment of pilots, in the first and third of these districts, is compulsory. But the following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the London District and the Trinity House Outports Districts. (1) Ships employed in the coasting trade of the United Kingdom. (2) Ships of not more than sixty tons burden. (3) Ships trading to Boulogne, or to any place in Europe north of Boulogne. (4) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, the produce of those islands. (5) Ships navigating within the limits of the ports to which they belong. (6) Ships passing through the limits of any pilotage district on their voyage between two places, both situate out of such limits, and not being bound to any place within such limits nor anchoring therein (ss. 369—388).

Trinity Sittings of the Court of Appeal, and of the High Court of Justice in Middlesex, commence on the Tuesday after Whitsun week, and terminate on the 12th of August. See SITTINGS.

Trinity Term, one of the four legal terms, beginning on the 22nd May, and ending on the 12th June. See TERMS, and last title.

Trinobantes, Trinonantes, or **Trinovantes**, inhabitants of Britain, situated next to the Cantii northward, who occupied, according to Camden and Baxter, that country which now comprises the counties of Essex and Middlesex, and some part of Surrey. But if Ptolemy be not mistaken, their territories were not so extensive in his time, as London did not then belong to them. The name seems to be derived from the three following British words:—*Tri, now, hant*, i.e., inhabitants of the new city (London).—*Encyc. Lond.*

Trinoda necessitas. Under this denomination are comprised three distinct imposts, to which all landed possessions, not excepting those of the church, were subject, viz.:—(1) Bryge-bót, for keeping the bridges and high roads in repair.—(*Pontis constructio.*) (2) Burg-bót, for keeping the burgs or fortresses in an efficient state of defence.—(*Arcis constructio.*) (3) Fyrd, or contribution for maintaining the military and naval force of the kingdom.—*Anc. Inst. Eng.*

Triors, or **Triers**, such as were chosen by the court to examine whether a challenge made to the pannel of jurors, or to any of them, be just or not.—*Brook's Abridg.* 122.

Tripartite, divided into three parts, having three correspondent copies; a deed to which there are three distinct parties.

Triplicatio, a rebutter.

Tristis, a forest immunity.—*Manw.* 1, 86.

Tritavia, a great-grandmother's great-grandmother; the female ascendant in the sixth degree.—*Civ. Law.*

Tritavus, a great-grandfather's great-grandfather; the male ascendant in the sixth degree.—*Ibid.*

Trithing, the third part of a hire or province; a riding.—*Cowel.*

Trithing-reeve, a governor of a trithing.

Triumvir, a trithing man or constable of three hundred.—*Cowel.*

Triverbial days [*dies fasti*, Lat.], judicial days, when the courts are open for business; so called from the three words *do, dico*, and *addico.*

Tronage, a customary duty, or toll for weighing wool.—*Cowel.*

Tronator, a weigher of wool.—*Cowel.*

Trophy money, money formerly collected and raised in London, and the several counties of England, towards providing harness, and maintenance for the militia, etc.

Trover [fr. *trouver*, Fr., to find]. This was a special action upon the case, properly called the action of trover and conversion, which might be maintained by any person who had either an absolute or special property in goods, for recovering the value of such goods against another, who having or being supposed to have obtained possession of such goods by lawful means, had wrongfully converted them to his own use. It originally lay only where the goods have been lost by the plaintiff and *found* (whence the name) by the defendant, but it was in course of time allowed to be brought as above upon a fictitious allegation of the finding not required to be proved, but not formally abolished until 1852 by the C. L. P. Act, 1852, s. 49.

The action was also termed one of conversion, but 'wrongfully depriving' is the term now used.

Troy weight [*pondus Trojæ*, Lat.], a weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

Truchman, an interpreter.

Truck Acts, 1 & 2 Wm. IV. c. 37, and 50 & 51 Vict. c. 46, the Truck Act, 1831, and the Truck Amendment Act, 1887, passed to prevent the payment of wages in goods instead of money. The plan has been for masters to establish warehouses or shops, and the workmen in their employ have either had their wages accounted for to them by supplies of goods from such depôts, without receiving any money, or they have had the money given them with an express understanding that they were to resort to the warehouses or shops of their masters for the articles of which they stood in need. This system is made illegal by the Truck Acts.

True bill [*billa vera*, Lat.], the endorsement which the grand jury makes upon a bill of indictment when, having heard the evidence, they are satisfied of the truth of the accusation.

Trust. See TRUSTEE and CESTUI QUE TRUST.

True, Public, and Notorious. These three qualities used to be formally predicted in the libel in the Ecclesiastical Courts, of the charges which it contained, at the end of each article severally.

Trustee, one entrusted with property for the benefit of another, called *cestui que trust*, which see.

Any trustee may apply to a judge of the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 34), for the opinion, advice, or direction of such judge, on any question respecting the management or administration of the trust property; and the trustee, etc., *bonâ-fide* acting upon the opinion, etc., given by the said judge, is deemed to have discharged his duty in the subject-matter of the application.—22 & 23 *Vict.* c. 35, s. 30, and 23 & 24 *Vict.* c. 38, s. 9. Powers for the appointment of new trustees in the room of incapable or retiring trustees, etc., are provided by ss. 31—34 of the Conveyancing and Law of Property Act, 1881, replacing similar sections of Lord Cranworth's Act, 23 & 24 Vict. c. 145, ss. 27, 30.

No claim of a *cestui que trust* against his trustee for any property held on an express trust, is barred by any statute of limitation (Jud. Act, 1873, s. 25 (2)).

Trustee Acts, statutes providing, for the benefit of *cestui que trust*, that new trustees may be appointed in the place of absent, lunatic, or defaulting trustees, etc.—13 & 14 *Vict.* c. 60; 15 & 16 *Vict.* c. 55; and 18 & 19 *Vict.* c. 91, s. 10. As to gratuitous trustees in Scotland, see 24 & 25 Vict. c. 84; 26 & 27 Vict. c. 115.

Trustee Relief Acts, statutes providing for the relief of trustees, e.g., that they may discharge themselves of their trust by paying the trust funds into the Chancery Division of the High Court of Justice.—10 & 11 *Vict.* c. 96; 12 & 13 *Vict.* c. 74; 13 & 14 *Vict.* c. 43, s. 12; 22 & 23 *Vict.* c. 35, ss. 26, 33; 23 & 24 *Vict.* ss. 9, 12.

'The Trustee Act, 1888,' 51 & 52 Vict. c. 59, provides for the relief of trustees and beneficiaries also, by allowing trustees to receive trust moneys by solicitors, to make deprecatory conditions on sales, to insure buildings, to plead the statute of limitations, and to renew renewable leaseholds at the expense of the trust estate. By the same Act (s. 4), no trustee lending money on security of property is chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time of the loan, provided the trustee was acting upon a report of a person whom the trustee reasonably believed to be an able, practical, and independent surveyor, and that the loan does not exceed two-third parts of the value of the property as stated in such report. It is also provided (s. 6) that where a trustee

has committed a breach of trust at the instance of a beneficiary, the Court may impound the interest of the beneficiary by way of indemnity to the trustee or person claiming through him.

Trust Investments. A list of authorised investments by trustees and executors, 'unless expressly forbidden by the instrument (if any) creating the trust,' is contained in the Trust Investment Act, 1889, 52 & 53 Vict. c. 32.

Trustees, fraudulent, Punishment of. By 24 & 25 Vict. c. 96, s. 80, the appropriation of the trust fund by the trustee to his own use is punishable by penal servitude for five years or imprisonment for two years, but the sanction of the Attorney-General is necessary for a prosecution.

Trusts. A trust is simply a confidence, reposed either expressly or impliedly in a person (hence called the trustee), for the benefit of another (hence called the *cestui que trust*, or beneficiary), not, however, issuing out of real or personal property, but as a collateral incident accompanying it, annexed in privity to (i.e., commensurate with) the interest in such property, and also to the person touching such interest, for the accomplishment of which confidence the *cestui que trust* or beneficiary has his remedy in equity only; the trustee himself likewise being aided and protected in the proper performance of his trust when he seeks the Court's direction as to its management.

Every kind of property in which a legal interest may be given, whatever may be its quantity or quality, if it will yield a profit, may be impressed with a trust, which equity will carry out without regard to form, provided its purpose do not contravene the policy of the law, or the principles governing the rights of property; for *qui hæret in literâ hæret in cortice.*

Trusts may be classed thus:—

(I.) Express, divided into—

(*a*) Trusts executed, perfect, complete, or constituted.

(*b*) Trusts executory, imperfect, incomplete, or directory.

(II.) Arising by operation of law, divided into—

(*a*) Constructive.

(*b*) Resulting.

(*c*) Implied.

Trusts are also divisible into: (1) permanent, when there is a continuing duty to be performed for the benefit of several persons in succession; and (2) temporary, when there is one particular duty only to perform. Again, trusts may be general, where a trustee's duty is passive; and special, where it is active.

A trust being, in contemplation of equity, the substantial ownership of property, its legal possessor can create a trust in relation thereto, co-extensive with his ability to dispose of it at law.

The Statute of Frauds, 29 Car. II. c. 3, s. 7, requires that 'all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.' This provision does not include declarations of trust affecting chattels personal, which may be created by parol, provided they are to take effect during the life of their creator.

Since it is not necessary that a trust be declared in writing, but only so manifested and proved, no form is requisite either as regards the nature of the instrument or the language; the statute will be satisfied if the trust can be established by any subsequent acknowledgment of the trustee, however informally or indirectly made, as by a letter under his hand, by his statement of defence in an action, or by a recital in a deed, provided it relate to the subject-matter, and the precise nature and object of the trust can be ascertained. A trust cannot be engrafted upon a will unless by a testamentary or codicillary paper executed with the statutory formalities, but if a devise or bequest of the legal estate be accompanied with any *mala fides* in the devisee or legatee, as if there be an express or implied undertaking to execute the intent of making a provision for third persons, the Court will certainly establish such a trust.

A trust may be declared either directly or indirectly:—

To create a trust by a direct or formal declaration, a person need only make his meaning clear as to the interest he intends to give, without regarding the technical terms of the Common Law in the limitation of legal estates. An equitable fee may be granted without the word 'heirs,' and an equitable entail without the words 'heirs of the body'; but, though technical terms be not absolutely necessary, yet no rule is better established than that where technical terms are employed, they shall be taken in their legal and special sense. A distinction, however, must be drawn between trusts executed and trusts executory.

A constructive trust is properly a trust declared by a person indirectly, and construed by the Court in favour of the intention. Thus when property is given absolutely to any person, and he is recommended, or en-

treated, or wished, by the donor having power to command, to dispose of such property in favour of another, the recommendation, entreaty, or wish creates a trust provided the words are so used that, upon the whole, they ought to be construed as imperative; and also provided that the subject of the recommendation or wish, as well as the objects or persons intended to have the benefit of such recommendation or wish, be certain and definite. There is not any inclination to extend the rule of construction, which gives an imperative effect to precatory or recommendatory words.

Where, from the different parts of the instrument, it appears that the words are expressive of a mere expectation or wish, no trust will arise; as where the words are, that the donee will be kind to, or remember certain objects or classes, or the like; or where the donor uses such expressions as, 'trusting to the justice of his successors,' and it is to be inferred that it is their own sense of justice on which he relies. When the testator recommends, but adds that he does not absolutely enjoin, it is clear that the expressions are to be taken as precatory only, and not imperative. If it appear from the context that the first taker was intended to have a discretionary power to withdraw the whole or any part of the subject from the object of the wish or request, or if there are any words by which it is expressed, or from which it can be implied, that the first taker may apply any part of the subject to his own use, it will not be held that a trust is created.

In recommendatory trusts, if the words for any reason do not amount to a trust, or the intended trust fail in the whole or in part, the absolute interest remains in the donee; or if the trust established do not exhaust the property given, the donee retains, in virtue of the gift, so much of the property as is not affected with the trust; but if property be given to a person as trustee only, if no trust be declared, or the trust declared or purporting to be declared should fail, then there is a resulting trust for the donor or those claiming under him, and the donee can claim nothing beneficially, nothing being given to him but as trustee

Any person may be appointed a trustee except a criminal attainted. Formerly an alien could not be a trustee of realty; but see now ALIEN. A corporation may be constituted a trustee of personalty and also of realty upon charitable trusts; but not upon private trusts by reason of the statutes of mortmain. Equity will, however, supply a trustee where realty is so devised to a corporation. It was formerly never advisable to select a married woman to be a trustee, on account of her inability to join in the requisite assurances without her husband's concurrence; but now, by the 'Vendor and Purchaser Act, 1874' (37 & 38 Vict. c. 78), s. 6, 'when any freehold or copyhold hereditament shall be vested in a married woman *as a bare trustee*, she may convey or surrender the same as if she were a *feme sole*.' Nor should an infant be appointed a trustee, on account of his legal disability. If a trust involve the receipt and custody of money, the safeguard of at least two trustees ought rarely to be dispensed with.

In order to vest the legal estate of a simple trust in a trustee, it should be conveyed or devised 'to the trustee and his heirs to the use of the trustee and his heirs,' or 'unto and to the use of the trustee and his heirs,' then superadding the trusts. Should, however, the trusts be special, imposing an agency upon the trustee, then by a limitation to A. and his heirs, upon trust to pay the rents or to permit and suffer a person to receive and take the net rents and profits, or to convey the estate; or if any control is to be exercised, or duty to be performed, as upon trust to apply the rents to a person's maintenance, or in making repairs, or to hold for the separate use of a *feme covert*, or to permit a *feme covert* to receive the profits for her separate use, or to preserve contingent remainders, and *à fortiori* to raise a sum of money, or to dispose of by sale, the operation of the Statute of Uses is effectually excluded, and the trustee takes the legal estate. But if the trust is simply to 'permit and suffer A. to receive the rents,' or the legal estate be limited to the trustees charged with debts, and subject thereto in trust for A., and no direction is given to the trustees personally to pay the debts, then, as the trustees have no agency assigned to them, but merely stand seised in trust, the Statute of Uses will operate, and execute the possession in A.

Any person who can purchase and hold a legal estate may become a beneficiary of the equitable interest in property.

By the 'Vendor and Purchaser Act, 1874' (37 & 38 Vict. c. 78), the legal personal representative of a mortgagee may convey the mortgaged estate (s. 4); and by s. 48 of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), repealing s. 5 of the above Act, upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament of which such trustee was seised in fee-simple, such hereditament shall rest like a chattel real in the legal personal representative of

such trustee. This latter section, however, does not apply to lands registered under the Land Transfer Act, 1875.

A trust will be enforced wherever there is a valuable consideration; but, if it be merely voluntary, the equitable interest will not be enforced, unless an actual trust be created, and no act remains to be done to complete the title of the trustees, for then a consideration is not essential. An agreement founded on a meritorious consideration (i.e., a secondary valuable consideration, as in favour of a wife or children) will not be executed as against the settlor himself, but as between parties claiming under the settlor; if the Court can act in favour of the meritorious consideration without inflicting a hardship on persons peculiarly entitled to protection, the voluntary agreement will in such a case be specifically executed.

The rule is to carry into effect the object proposed by the trust, unless it is in contravention of the public policy of the law; as, for instance, seeking to create a perpetuity, or accumulating annual income beyond the statutory limits. See PASSIVE TRUST. Consult *Lewin on Trusts; Geare on Trustees.*

By the Judicature Act, 1873, s. 34, the execution of trusts, charitable or private, is assigned to the Chancery Division of the High Court of Justice.

Tub, 60 lbs. of tea.

Tub-man, a barrister who had a pre-audience in the Court of Exchequer, and also in the Exchequer Division of the High Court, and also a particular place in court.

Tumbrell, a castigatory, or dung cart.

Tumultuous petitioning. See PETITION.

Tun, four hogsheads.

Tuncaw, Tunkha, an assistant of the revenue for personal support or other purposes.—*Indian.*

Tungreve, a town-reeve or bailiff.—*Cowel.*

Turbary [fr. *turbus* or *turba,* obs. Lat., turf, or Saxon, meaning either the right of taking turf, or the ground whence it is taken], the liberty of digging turf upon another man's ground. It may be either by grant or prescription, and either appurtenant or in gross. It can be appurtenant only to a house, and can only be a right to take turf for fuel for such house.—1 *Steph. Com.*

Turn, or **Tourn,** the great court-leet of the county, as the old county-court was the court-baron; of this the sheriff was judge, and the court was incident to his office, wherefore it was called the sheriff's tourn, and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred.—2 *Hawk. P. C.* c. 10. The tourn, which had long been obsolete, is formally abolished by s. 18 of the Sheriffs Act, 1887.

Turner's (Sir George) Act, 13 & 14 Vict. c. 35, providing for the statement of a special case in equitable matters, abolished by Rule of Court in 1880.

Turnkey, a gaoler.

Turnpike-roads, ways maintained out of tolls paid by passengers. These did not fall within the operation of the Highway Act, 5 & 6 Wm. IV. c. 30, but were regulated primarily by the local acts relative to each particular road, which, though temporary, were, until about the middle of the present century, almost invariably renewed by the legislature from time to time as they were about to expire; and in the next place by statutes of a general description, of which the principal was the consolidating 3 Geo. IV. c. 126, applicable (with very few exceptions) to all turnpike-roads, that is, all roads maintained by tolls, and placed under the management of trustees or commissioners for a limited period of time. This Act, however, is repealed by the Statute Law Revision Act, 1890, with the exception of such provisions as are applied to dis-turnpiked roads by the Annual Turnpike Acts Continuance Acts of 1865 and 1870. There were at one time many thousand turnpike trusts. In 1864 they numbered above a thousand, but in 1879 they had been reduced to little more than two hundred, by expiration in accordance with 'Annual Turnpike Continuance' Acts; and they have now (1891) practically ceased to exist. (See *Chit. Stat.*, vol. 3, tit. '*Highways* (*Turnpike*)'; also vol. 8, p. 855.

Turpis causa, a base or vile consideration on which no action can be founded.

Turpis est pars quæ non convenit cum suo toto. Plow. 161.—(That part is bad which accords not with its whole.)

Tuta est custodia quæ sibimet creditur. Hob. 340.—(That guardianship is secure which is entrusted to itself alone.)

Tutelage, guardianship; state of being under a guardian.—*Sand. Just.*, 7th ed., 54.

Tutius erratur ex parte mitiore. 3 Inst. 220.—(It is safer to err on the gentler side.)

Tutius semper est errare acquitando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ. H. H. P. C. 290.—(It is always safer to err in acquitting than in punishing; on the side of mercy than of strict justice.)

Tutor, a guardian; a protector; an instructor.

Tutorship, the office and power of a tutor.

Tutrix, a female tutor.

Twanight geste, a guest at an inn a second night.—*Cowel.* See THIRD-NIGHT-AWN-HINDE.

Twelfhindi, the highest rank of men in the Saxon government, who were valued at 1200*s*. If any injury were done to such persons, satisfaction was to be made according to their worth.—*Cowel.*

Twelve-day writ. A writ issued under the 18 & 19 Vict. c. 67, for summary procedure on bills of exchange and promissory notes, abolished by Rule of Court in 1880.

Twelvemonth (sing.), a year; but twelve months (plur.) are computed according to twenty-eight days for each month.—6 *Rep.* 62.

Twyhindi, the lower order of Saxons, valued at 200*s*. in the scale of pecuniary mulcts inflicted for crimes.—*Cowel.*

Tyburn ticket, a certificate which was given to the prosecutor of a felon to conviction.

Tyhtlan, an accusation, impeachment, or charge.—*Cowel.*

Tylwith, a tribe, house, or family.—*Cowel.*

Tyrannicide, the slaughter of a tyrant.

Tyth, tithe, or tenth part.

Tything, a company of ten; a district; a tenth part. See TITHING.

Tzar, Tzarina, the Emperor and Empress of Russia. See CZAR.

U.

Uberrima fides [Lat.] (*most abundant faith*). Contracts said to require *uberrima fides* are those between persons in a particular relationship, as guardian and ward, attorney and client, physician and patient, confessor and penitent.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest.—(When anything is granted that also is granted without which it could not exist.)

Ubication, or **Ubiety** [fr. *ubi*, Lat., where], local position.—*Encyc. Lond.*

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium et nunquam decurritur ad extraordinariam ubi valet ordinarium. Grounds and Rudiments of the Law, 491.—(Where the ordinary remedy fails, recourse is had to the extraordinary remedy, but recourse is never had to the extraordinary where the ordinary is sufficient.)

Ubi damna dantur victus victori in expensis condemnari debet. 2 Inst. 289.—(Where damages are awarded the unsuccessful party ought to be condemned in costs to the successful party.)

Ubi eadem ratio ibi eadem lex; et de similibus idem est judicium. 7 Co. 18.—(Where the same reason exists, there the same law prevails; and of things similar, the judgment is similar.)

Ubi jus, ibi remedium. Co. Litt. 197 *b*.—(Where there is a right there is a remedy.) See *Broom's Leg. Max.*, 6th ed., 181, 182.

Ubi lex est specialis, et ratio ejus generalis generaliter accipienda est. 2 Inst. 43.—(Where the law is special, and the reason of it general, it ought to be taken as being general.)

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Ellesm. Postn. 41.—(Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.)

Ubi non est principalis non potest esse accessorius. 4 Co. 43.—(Where there is no principal there cannot be an accessory.)

Ubi nullum matrimonium ibi nulla dos.—(Without matrimony there is no dower.) As to the application of this maxim see *Co. Litt.* 32.

Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque. 10 Co. 78.—(Where a thing is conceded generally this exception arises, that there shall be nothing contrary to law and right.)

Ubi verba conjuncta non sunt sufficit alterutrum esse factum. D. 50, 17, 110, s. 3.—(Where words are not conjoined, it is enough if one or other be complied with.)

Udal, allodial, which see.

Ukaas, or **Ukase**, a Russian law or ordinance.

Ullage [fr. *uligo*, Lat., ooziness], the quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor.—*Malone.*

Ulnage, alnage, which see.

Ulna ferrea, the standard ell of iron, which was kept in the Exchequer for the rule of measure.—*Mon. Angl.* ii. 383.

Ulpian, a great Roman jurist. He flourished in the time of Alexander Severus, about A.D. 222. The Code of Justinian is in great part founded on his works.

Ultimatum, or **Ultimation**, the last offer, concession, or condition.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. Co. Litt. 322.—(The last will of a testator is to be fulfilled according to his true intention.)

Ultimum supplicium, the last or extreme punishment: death.

Ultimus hæres, the last or remote heir, that is, the sovereign, who succeeds, failing all relations.—*Scotch Law phrase.*

Ultrà; damages ultra, damages beyond a sum paid into court.

Ultrà vires [Lat.] (*beyond their powers*), said of a company or corporation, etc., when

exceeding the authority imparted thereto by Act of Parliament. Consult *Brice on the Doctrine of Ultra Vires*, and *Ashbury Railway Carriage and Iron Co.* v. *Riche*, *L. R.* 7 *H. L.* 653.

Umpirage, friendly decision of a controversy; arbitration.

Umpire [fr. *imperator* or *impar*, Lat.]. A submission to arbitration usually provides that in case of arbitrators not agreeing in an award, the matters should be decided by a third person who is called an umpire. The submission either provides that the arbitrators shall appoint the umpire, or he is named therein. This appointment should always be made a condition precedent to the proceeding at all in the reference. The appointment of an umpire must be the act of the will and concurring judgment of both the arbitrators. The umpire's authority commences when arbitrators are unable to agree, but if there be a time limited for the award, his authority absolutely commences from such time. The umpire, when called upon to act, is generally invested with the same powers as the arbitrators, and bound by the same rules, and has to perform the same duties. Consult the Arbitration Act, 1889, and *Russell on Awards*.

Umquhile, deceased.

Una persona vix potest supplere vices duarum. 7 Co. 118.—(One person can scarcely supply the places of two.) *Vide Beamish* v. *Beamish*, 9 *H. L. Cases*, 274.

Unâ Voce [Lat.] (*with one voice*, i.e., *unanimously*).

Unceasesath [fr. *ceas*, Sax., prosecution, *un*, without, and *ath*, oath], an oath by relations not to avenge a relation's death.—*Blount.*

Uncertainty. Where the words of a deed or will are so vague that no meaning with definite limits can be assigned to them, the grant or gift is *void for uncertainty*: as if one bequeath '*some* of his property' to A., or all his property 'to *one* of his sons.'

Unclaimed dividends in the public funds. See National Debt Act, 1870, 33 & 34 Vict. c. 71, s. 51 *et seq.* (replacing the repealed 56 Geo. III. c. 60, and 8 & 9 Vict. c. 62), by which if no dividend is claimed on stock for ten years, the stock is transferred to the National Debt Commissioners, but may be re-transferred at any time afterwards to a person showing title. As to Ireland, see 23 & 24 Vict. c. 71. And as to bankruptcy, see 32 & 33 Vict. c. 71, s. 116; *Ibid.* c. 83, s. 19; and Jud. Act, 1875, s. 32.

Uncle and Nephew. A nephew, the son of a deceased elder brother, is preferred in the inheritance to his uncle, a younger brother of the deceased.

Uncore prist, the plea of a defendant in the nature of a plea in bar, where being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it, and that he is also still ready to pay the same.—*Cowel.*

Uncuth [Sax.], unknown.—*Cowel.*

Unde nihil habet. See DOWER.

Under chamberlains of the Exchequer, two officers who cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday Book. Abolished.

Under-lease, a grant by a lessee to another of a part of his whole interest under the original lease, reserving to himself a reversion; it differs from an assignment, which conveys the lessee's whole interest, and passes to the asignee the right and liability to sue and be sued upon the covenants in the original lease. An under-lease for the whole term of the original lease amounts to an assignment. —*Beardman* v. *Wilson*, *L. R.* 4 *C. P.* 57.

Under Secretary of State Indemnity Act, 27 & 28 Vict. c. 21.

Under Sheriff [*sub vicecomes*, Lat.], the sheriff's deputy. See SHERIFF.

Undertaking to appear by a solicitor for a defendant in an action. A solicitor not entering an appearance in pursuance of his written undertaking to do so, is liable to an attachment (R. S. C. 1883, Ord. XII., r. 18).

Under-tenant, one who holds by underlease, from a lessee. Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee.—*Watk. Conv.* 308.

Under Treasurer of England [*vice-thesaurarius Angliæ*, Lat.], he who transacted the business of the Lord High Treasurer.

Under-writer, an insurer of ships, so called from his writing his name under the policy of insurance. See INSURANCE.

Undres, minors or persons under age not capable of bearing arms.—*Fleta*, l. 1, c. 9.—*Cowel.*

Undue Influence, any improper pressure whereby the party pressed is induced to benefit the party pressing. Both a gift (see *Lyon* v. *Home*, *L. R.* 6 *Eq.* 655) and a will (see *Parfitt* v. *Lawless*, *L. R.* 2 *P. & M.* 462) may be set aside on the ground of undue influence, but the natural influence, the exer-

tion of which would justify the setting aside of a gift, may be lawfully exercised to obtain a will or legacy (*Parfitt* v. *Lawless*, *ubi sup.*; in this case a will in favour of a Roman Catholic priest, who was confessor of the testatrix, was upheld). And see *Allcard* v. *Skinner*, 36 Ch. D. 145.

In election matters, undue influence is any force, violence, or restraint, or the infliction, or threat to inflict, any injury, or the practice of any intimidation, in order to induce any person to vote, or refrain from voting, or on account of his having done so; every person so offending is guilty of a misdemeanour, and forfeits the sum of 50*l.*; and if a candidate for election, disqualified from sitting in parliament for the same constituency, in the parliament then in existence.—17 & 18 *Vict.* c. 102, ss. 5, 36, and other Acts. *See Chit. Stat.*, vol. 4, tit. '*Parliament* (*Corrupt Practices*').

Undue Preference, the improper preferring of one customer over another by a railway or canal company, prohibited by the Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, s. 2. See RAILWAY AND CANAL COMMISSION.

Unfrid [Sax.], one who has neither peace nor quiet.

Ungeld, an outlaw.

Unica taxatio, the obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.

Uniformity, Act of, which regulates the terms of membership in the Church of England and the Colleges of Oxford and Cambridge, 13 & 14 Car. II. c. 4. See ACT OF UNIFORMITY.

Uniformity of Process Act, 2 Wm. IV. c. 39, by which personal actions, theretofore commenced by different processes in the Courts of King's Bench, Exchequer, and Common Pleas, were first commenced by one process applicable to all three Courts alike. See LATITAT, QUOMINUS.

Unigeniture, the state of being the only begotten.

Unilateral, one-sided.

Unilateral contract. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. A loan of money and a loan for use are of this kind.—*Civ. Law.*

Union of parishes for the purpose of administering the laws for the relief of the poor, first effected under 22 Geo. III. c. 83 (Gilbert Act), and afterwards under the Poor Law Amendment Act, 1834, 4 & 5 Wm. IV. c. 76.

A union workhouse is also sometimes called 'a union.'

Union Assessment Committee. A committee of the Board of Guardians of every union, consisting of not less than six nor more than twelve, having jurisdiction to revise the valuation lists framed by the overseers of each parish for the purpose of rating to the poor rate. See Union Assessment Committee Acts of 1862 and 1864, 25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39, by the latter of which there can be no appeal against a poor rate to quarter sessions without previous notice of the objection of the appellant to the assessment committee, and failure to obtain relief from such committee.

Union Chargeability Act, 1865, 28 & 29 Vict. c. 79, by which the cost of the relief of the poor is chargeable on the common fund of a union instead of separating the fund of each parish therein, and one year's residence in any parish constitutes the status of irremovability of a pauper.

Union Loans Act, 1869, 32 & 33 Vict. c. 45.

Union of Benefices. See 1 & 2 Vict. c. 136; 13 & 14 Vict. c. 98; 18 & 19 Vict. c. 127; 23 & 24 Vict. c. 142; and 34 & 35 Vict. c. 90.

Union Relief Aid Act, 25 & 26 Vict. c. 110, continued by 26 & 27 Vict. cc. 4, 91.

Unitas personarum, the unity of persons, as that between husband and wife, or ancestor and heir.

United States of America, declared their independence on 4th July, 1766, and were acknowledged by England on the 3rd September, 1783. See 22 Geo. III. c. 40.

Unity of possession, where one has a right to two estates, and holds them together in his own hands, as if a person takes a lease of lands from another at a certain rent, and afterwards buys the fee-simple, this is an unity of possession by which the lease is extinguished, because that he who had before the occupation only for his rent, is now become lord and owner of the land.—*Termes de la Ley.* See JOINT-TENANCY.

Universal agent, one who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an universal agency may potentially exist, but it must be of the rarest occurrence. And indeed it is difficult to conceive of the existence of such an agency practically, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* but *dominus*

rerum, the complete disposer of all the rights and property of the principal. The law will not from general expressions, however broad, infer the existence of any such universal agency; but it will rather construe them as restrained by the principal business of the party in respect to which it is presumed his intention to delegate the authority was principally directed.—*Story's Agency*, 18.

Universal legacy, a testamentary disposition by which the testator gives to one or more persons the whole of the property which he leaves at his decease.—*Civ. Law.*

Universal partnership, a species of partnership, by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire.—*Civ. Law.*

Universalia sunt notiora singularibus. 2 Rol. Rep. 294.—(Things universal are better known than things particular.)

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat. Dav. 48.—(An university or corporation is not said to do anything unless it be deliberated upon collegiately, even though the majority of them do it.)

Universities and College Estates Act, 1858, 21 & 22 Vict. c. 44, extended by 23 & 24 Vict. c. 59. See next title.

University, a corporation forming one whole out of many individuals: a school where all kinds of literature are taught. The English Universities are those of Oxford, Cambridge, Durham, and London; the Scotch, those of Aberdeen, St. Andrew's, Edinburgh, and Glasgow; the only Irish University is the University of Dublin.

The 24 Vict. c. 26, proceeding on the preamble that it is expedient that the benefits of the Universities of Oxford, Cambridge, and Durham, and of the colleges and halls now subsisting therein as places of religion and learning, should be rendered freely accessible to the nation, and that by means of divers restrictions, tests, and disabilities many of Her Majesty's subjects are debarred from the full enjoyment of the same, makes various provisions for the removal of religious tests. See *Reg.* v. *Hertford College*, 3 *Q. B. D.* 693, in which it was held that the Act applies only to colleges subsisting before it was passed. The 36 & 37 Vict. c. 21 has made similar alterations in the law with regard to the University of Dublin and Trinity College. The College Charter Act, 1871, 34 & 35 Vict. c. 63, provides that a copy of any application for a charter for a new college or university shall be submitted to Parliament as well as to the Sovereign in Council.

In 1854, by 17 & 18 Vict. c. 81, commissioners were appointed with powers to frame statutes for the better government, etc., of Oxford University, and the colleges therein; and in 1856, by 19 & 20 Vict. c. 88, other commissioners with the like powers as to Cambridge. In 1877, by 40 & 41 Vict. c. 48, commissioners were appointed with the like powers as to both Oxford and Cambridge.

University Court. See CHANCELLOR OF THE UNIVERSITIES.

University Press, the public press of the University of Oxford.—3 *Steph. Com.*

Unlage [Sax.], an unjust law.—*Cowel.*

Unlawful Assembly, any meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm.—4 *Steph. Com.*

Unliquidated damages, penalties or damages not ascertained. See LIQUIDATED DAMAGES.

Unmarried, without ever having been married.—*Blundell* v. *De Falbe*, 57 *L. J. Ch.* 576.

Unnatural offence, the infamous crime against nature.

Uno absurdo dato, infinita sequuntur. 1 Co. 102.—(One absurdity being allowed, an infinity follows.)

Uno flatu. At the same moment, and with the same intent.

Unques [Nor.-Fr.] (*yet*).

Unques prist. See UNCORE PRIST.

Unseaworthy ships. See the Merchant Shipping Act, 1875, 38 & 39 Vict. c. 88, which gives power to the Board of Trade for stopping unseaworthy ships, and imposes penalties on those who send them to sea, and further provides for the marking of deck lines and load lines.

Unsound food. Extensive powers for the inspection and seizure of unsound food are given by the Public Health Act, 1875, ss. 116—119, and the Public Health (London) Act, 1891, s 47. By subs. 4 of the latter Act the seller of unsound food may be ordered, upon a second conviction, to affix a notice of the facts upon his premises. Compare the title ADULTERATION.

Unsound mind. See IDIOTS AND LUNATICS.

Unsworn testimony. As to its admission in certain cases in civil and criminal proceedings in Colonial Courts, see 6 & 7 Vict. c. 22.

Unthrift, a person of outrageous prodigality.

Unumquodque dissolvitur eodem ligamine quo ligatur.—(Every obligation is dissolved by the same solemnity with which it is created.) For the application of this maxim see *Broom's Leg. Max.*, 6th ed., 832.

Unumquodque eodem modo quo colligatum

est dissolvitur; quo constituitur, destruitur. 2 Rol. Rep. 39.—(In the same manner in which anything is bound it is loosened; in the same manner in which it is constituted is destroyed.) See preceding maxim.

Unumquodque est id quod est principalius in ipso. Hob. 123.—(That which is the principal part of a thing is the thing itself.)

Unumquodque principiorum est sibimet ipsi fides; et perspicua vera non sunt probanda. Co. Litt. 11.—(Every principle is its own evidence, and plain truths are not to be proved.)

Unus Nullus Rule, The. The rule of evidence which obtains in the Civil Law, that the testimony of *one* witness is equivalent to the testimony of *none*. See *Best on Evidence*, bk. 3, pt. 2, c. 10. In our law corroboration is required in an action for breach of promise of marriage, and on a summons for an affiliation order, and two witnesses on an indictment for treason or perjury, and for attestation of a will. The unsupported evidence of an accomplice, though legally admissible, is usually rejected by a jury under the direction of the judge. With these exceptions, the rule of our law is that witnesses are weighed, not counted,—'*ponderantur testes, non numerantur.*'

Upper bench [*bancus superior*, Lat.], the style of the Queen's Bench during the protectorate of Cromwell.

Upset price, in sales by auction, an amount for which property to be sold is put up, so that the first bidder at that price is declared the buyer.

U. R. (initials of *uti rogas*, be it as you desire), a ballot, thus inscribed, by which the Romans voted in favour of a bill or candidate. —*Tay. C. L.* 191. See A.

Urban Sanitary District. Under the Public Health Act, 1875, s. 6, every Municipal Borough (see BOROUGH), Improvement Act District, and Local Government District (see LOCAL BOARD), in each of which areas, as distinguished from a rural sanitary district (see that title), a Town Council, the Improvement Act Commissioners, or the Local Board, as the case may be, manage the Highways, control the sewers, appoint inspectors of nuisances, and otherwise provide for the public health.

Urban servitudes, servitudes connected with houses, such as support, light, stillicide, etc.—*Bell's Scotch Law Dict., voce* SERVITUDE.

Ure, custom, practice.—13 *Eliz.* c. 2, s. 1.

Usage, practice long continued—6 *Rep.* 65; but it must always be proved, whereas a custom may in some cases (e.g., the custom of gavelkind) be judicially noticed without proof.

Usance [Fr.], the time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. If a foreign bill be drawn payable at sight, or at a certain period after sight, the acceptor will be liable to pay according to the course of exchange at the time of acceptance, unless the drawer express that it is payable according to the course of exchange at the time it was drawn, *en espèces de ce jour*. See *Byles on Bills*, 11th ed., 80—304. As to the usance between London and the various foreign countries, see *Ibid.*, pp. 204, 205.

Uses. The austere and unbending rules of our Common Law were, at a very early period of our history, found to be altogether unfit for those intricate arrangements of realty which family settlements, commercial speculations, and the multiplied relationships amongst individuals in society required. The Common Law, in its pure but inflexible strictness, treated the actual possession of property, and the abstract right to it, as one and inseparable. In order to have ascertained the owner of a landed estate, the question was, 'Who was in possession of it?' The person who satisfied this inquiry was to all intents and for all purposes the owner of the property. Nor was it difficult to find him out, since the possession of his estate was conferred upon him by a formal and notorious ceremony, technically called livery of seisin, which was performed openly and in the presence of the people of the locality.

It soon became evident that the iron rules of the Common Law were unfit for an age in any wise advanced beyond barbarism, and guided by reason. An inflexible tenure and a difficult alienation were stumbling-blocks to the increasing transfer of property, the career of commerce, the untrammelled dominion of one's own rights, and the complicated wants of an enterprising and refined people. As speculation expanded and the efforts of competitive industry multiplied, pressing emergencies and transitory difficulties sought accommodation and supply from landed property, and thence ingenuity was excited and experience sharpened to hit upon a device which should set at nought the sternness of existing law and the hardship of rigid ceremony.

A scheme was invented by the monastic jurists upon a model furnished to them by the Civil Law, which, by a nice adaptation, evaded, without overturning the Common Law. Thus two methods of transferring realty began to co-exist in this country—the ancient Common Law system, and the later invention, which is denominated USES.

Thus a novel contrivance, which was at first

but a trivial innovation, treated with contempt and indifference, has become, in its progress, a gigantic system, which having superseded the doctrines and practice of feudal law, is in fact the foundation of modern conveyancing.

Before the Statute of Uses, a use was in its nature equitable, and it may be defined to have been a right in Chancery to the beneficial ownership of an estate, the possession of which was vested, through confidence, in another. The person enjoying the beneficial right was called the *cestui que use*, or he to whose use the land was conveyed, and the person in possession the feoffee to uses. Thus A. conveyed an estate to F. to his (A.'s) own use *or* to the use of C.; F. was the feoffee to uses, and A. or C., as the case may be, the *cestui que use*.

The use consisted of three parts:—(1) That the feoffee to uses should suffer the *cestui que use* to take the profits; (2) that the feoffee to uses, upon the request of the *cestui que use*, or notice of his will, would convey the estate to the *cestui que use* or his heirs, or any other person by his direction; and (3) that if the feoffee to uses had been deprived, and so the *cestui que use* disturbed, the feoffee to uses would re-enter or bring an action to recontinue his possession.

The following were the requisites to be observed in raising uses:—

(1) There should have been a person capable of standing seised to a use.

(2) There should have been a person capable of receiving or taking the use.

(3) There should have been either a consideration to raise, or a declaration of, the use.

(4) There should have been a sufficient substance or hereditament out of which the use might have arisen.

The properties of uses were these:—

(1) They were descendible according to the rules of the Common Law relating to the inheritable estate of intestates: and the special customs of gavelkind, borough English, and copyholds, determined the particular descent of uses. This is an illustration of the well-known maxim, *Æquitas sequitur legem.*

(2) They were devisable even before the Statute of Wills, 32 Hen. VIII. c. 1.

(3) They were transferable, although at law they were mere *choses in action.*

(4) A *cestui que use* in possession of the land was deemed a tenant at will only, for he had neither *jus in re*, i.e., an estate, nor *jus ad rem*, i.e., a demand, and therefore he could bring no action, having neither title nor legal estate in the property.

(5) Neither could a widow be endowed, nor could a husband have his curtesy of a use, because the *cestui que use* had no legal seisin of the land.

(6) The *cestui que use* might have been impannelled on a jury.—2 *Hen. V.* c. 3.

(7) The feoffee to uses, being complete owner of the land at law, performed the feudal duties, had power to sell, brought actions, his widow became entitled to dower, and his estate was subjected to wardship, relief, and forfeiture for treason or felony. In fact, he was treated at Common Law as the absolute tenant of the fee.

(8) A use, being but the creature of equity, could not have been taken in execution for the debts of the *cestui que use*; for there was no process at Common Law but against legal estates.

(9) A use, not being an object of tenure, was therefore exempt from the oppressive burdens of the feudal system. It was not forfeitable for treason or felony, because it was not held of any person. This was afterwards broken in upon by statute 12 Ric. II. c. 3.

(10) A use was neither a chattel nor an hereditament; it was not then assets either for the executor or heir-at-law.

There were two kinds of uses, viz.:

(1) Official or active;

(2) Permissive or passive.

Uses were also distributable into—

(1) Express;

(2) Constructive; and

(3) Resulting.

There appears to have been a distinction between a use and a trust, even before the Statute of Uses. The use was an equitable interest general and permanent in the land, but an equitable interest which was either special or transitory was strictly a trust. Let us give an illustration of the difference: suppose a feoffment in fee, which transferred the possession to the feoffee, in whom a confidence was placed, to pay to some other person and his heirs the rents and profits, and to make such transfers as he or they should direct; this confidence was clearly the use, commensurate with the legal estate, the feoffee's permanent fee being subject to the distribution of the profits, and the direction of the *cestui que use* and his heirs. A trust, however, did not divide the property into possession and use, for in such a case they were both transferred to the feoffee, in whom a confidence was placed, that he would retain *both* for some given purpose; e.g., a feoffment made by A. to B. in trust, or to the intent to re-infeoff A., or that B. should convey to a third person: the trusts or intents were not uses, for the feoff was not to pay over the profits merely, but to

dispose of the profits *and also* the possession. This was not deemed a use, but a special trust lawful, in contradistinction to the special trust unlawful, which was created for fraudulent purposes, as to defraud creditors, to defeat the Statute of Mortmain, and the like.

If the two following statutes be compared, it will be manifest that Parliament did not consider the use and special trust to be the same: the 50 Edward III. c. 6, subjected the *special trust* to an execution by a creditor of the *cestui que trust*; while the 19 Hen. VII. c. 15, extended, for the first time, the estate of the *cestui que use*.

It is, therefore, important clearly to distinguish these three interests: (1) The use, properly so-called (which we have tried to explain); (2) the special trust lawful; and (3) the special trust unlawful. See TRUSTS.

'Though these uses,' remarks Lord C. B. Gilbert (*Uses*, c. 1, s. 8), 'had a very equitable beginning, yet like all new models and general schemes of ordering property, it introduced a great many unforeseen inconveniences, and subverted in many instances the institution and policy of the Common Law.

'First. Estates passed by way of use, from one to another, by bare words only, without any solemn ceremony or permanent record of the transaction, whereby a third person that had right knew not against whom to bring his action.

'Secondly. Uses passing by will, the heirs were disinherited by the inadvertent words of dying persons.

'Thirdly. Lords lost their wardships, reliefs, marriages, and escheats; the trustees letting the *cestui que use* continue the possession, whereby the real tenants that held the lands could not be discovered.

'Fourthly. The king lost the estates of aliens and criminals; for they made their friends trustees, who kept possession, and secretly gave them the profits, so that their use was undiscovered.

'Fifthly. Purchasers were insecure; for the alienation of the *cestui que use* in the possession was at Common Law a disseisin, and 1 Ric. III. c. 1, gave him power to alien what he had; yet the feoffees may still enter to re-vest a remainder or contingent use, which was never published by any record or livery, whereby the purchaser could know of them.

'Sixthly. The use was not subject to the payment of debts.

'Seventhly. Many lost their rights by perjury in averment of secret uses.

'Eighthly. Uses might be allowed in mortmain.'

These grievances led to the passing of the Statute of Uses.

The Act 27 Hen. VIII. c. 10, which transferred the equitable use into the legal estate by executing it in possession, is known by several names. It is usually called the Statute of Uses; its title on the parliament-roll is, 'An Act concerning Uses and Wills,' and in pleading it used to be described as *Statutum de usibus in possessionem transferendis*. It is the Magna Charta of English conveyancing.

It has been generally said that the object aimed at by the passing of this statute, which entirely revolutionised the system of the transfer of real property, was the total destruction of the use, by effecting an amalgamation of the legal and equitable interests; but, however this might be, it is certain that such an object has been signally defeated by the creation of the modern trust, which sprang from the judicial interpretation by the Common Law judges of the meaning of this celebrated statute.

There are six circumstances necessary to the execution of uses under the statute, viz.:—

(1) A person seised to the use.

(2) A *cestui que use in esse*.

(3) A use *in esse* in possession, reversion, or remainder.

(4) Every species of realty, except copyholds, whether corporeal or incorporeal, in possession, reversion, or remainder, may be conveyed to uses, but it must be *in esse*.

(5) There must be a seisin in the grantee, or feoffee, to uses at the time of the execution of the use.

(6) The use may be raised by a conveyance operating either by transmutation or non-transmutation of possession.

A classification of uses may be thus arranged:—

I. Present or executed; distributable into:

(*a*) Those arising by act of parties, which are created either—

(1) By express declaration in a deed;
(2) By presumed intention in a will;
(3) By certain considerations.

(*b*) Those arising by act of law, which are either—

(1) Resulting;
(2) Implied.

II. Future or executory (so called because they are not executed into legal estates by the statute, till they arise), distributable into:—

(*a*) Shifting or secondary;
(*b*) Springing;
(*c*) Contingent.

The following interests have been adjudged to be unaffected by the Statute of Uses:—

(1) Uses limited of copyholds—since no person can be introduced into the estate without the lord's consent; for if uses were permitted, there would then be effected a transmutation of the possession by operation of law, which would be contrary to the peculiarity of this kind of tenure.

Yet shifting or springing uses may be limited by copyhold surrenders, so as to have the effect of devesting prior vested estates.

(2) Leaseholds for years and chattel interests. It is said that the statute contemplated *freeholds* only, and therefore employed the word SEISED; now a tenant is only *possessed* of a leasehold for years.

(3) Active and constructive uses. When the use involves a direction to sell the estate and then divide the proceeds of the sale, or to pay debts, or to pay over the profits, or to convey to a child on attaining majority, or to re-convey on the repayment of a mortgage-loan, the statute was precluded from the very nature of the transaction from converting such a use into a legal right to the land, and equity, therefore, compels the trustee, who retains the legal estate notwithstanding the statute, to perform the duty confided in him.

And the trustee has the legal estate in the following cases:—A trust to permit a *feme covert* to receive the profits for, or to pay the same to, her separate use; and so of a trust to permit and suffer a party to receive and take the *net* rents and profits.

(4) A second use, or a use upon a use. The Common Law judges determined that the statute could only operate upon one use, and where another use was superadded it was a mere nullity, so that in a grant to A. to the use of B., to the use of C., the statute transferred A.'s possession to B., and turned B.'s use into the legal estate, and having done this, it went no further, but stopped short and could not meddle with C.'s use; which was an interest unknown before the statute. Upon this, equity interfered, and resuming her old dominion treated C., the person having the second use, as the beneficiary, and compelled B., having the statute use, to deal with the estate for C.'s benefit as a trustee, and then giving the technical term of 'trust' to C.'s second use, deprived the use properly so called of its beneficial interest, which was its very essence before the statute, and revived the twofold system of one person holding the legal estate in the land, while the equitable estate or the usufructuary right therein was actually enjoyed by another. So that the old scheme of things was recurred to, whilst the terms were somewhat changed, for uses executed by the statute still retained their name, the *cestui que use* being called the legal owner; but, uses not so executed, i.e., secondary uses, or a use upon a use, took the appellation of trusts, while the holder of such uses is commonly denominated the *cestui que trust* or beneficiary; and thus the Court of Chancery regained its jurisdiction over uses under the name of trusts.

Although for the sake of distinction, and in practice, the first use executed by the statute is called a use, and the second use not executed by the statute a trust, yet this phraseology is altogether arbitrary, for either word may be applied indiscriminately and convertibly to either estate, since the particular interests enjoyed by the parties depend upon their position with regard to one another, and not upon the term employed in their denomination. The usual and strictly technical form is:—

To F. to the use of C. in trust for E. (but it is immaterial whether it is in this form); or,

To F. to the use of C. to the use of E.; or,

To F. in trust for C. to the use of E.; or,

To F. in trust for C. in trust for E.;

the effect in any of the above *formulæ* being precisely the same, for C. would be the legal owner and E. the beneficial; so that a trust in name may be a use in effect, and *è converso*.

(5) Contingent uses, during the suspense of the contingency, cannot be executed by the statutes, because the requisites to execute the use cannot concur.

(6) It is said that devises are not within the Statute of Uses, because it was passed before the Statute of Wills (32 Hen. VIII. c. 1, A.D. 1540). But this is of no practical importance, since the Courts, in their decisions, are entirely guided by a testator's intention, and it has been always held, that if A. devise to B. and his heirs, to the use of or in trust for C. and his heirs, or in trust to permit C. and his heirs to take the profits, it shows that the testator intended that C. should have the legal estate in fee, and so the law decides. And if there be a devise to the use of A. for life, with remainder over, although it cannot take effect by way of a use executed by the statute, because there is no seisin to serve the use, yet A. will have the legal estate. Indeed uses will be executed in a will as if they were limited by deed, if such be the testator's intent.

Conveyances to uses legalise many dispositions which are altogether void at the Common Law, for uses may be suspended, revived, postponed, and accelerated in a way altogether opposed to the rules of the ancient feudal law. Amongst the most important relaxations thus introduced are the following:—

(1) A person can convey to himself, which he could not at the Common Law, as it would

have been absurd to give possession by livery of seisin to one's self.' This is found to be convenient, especially in the following example:—

It frequently happens that upon the death or removal of trustees, it becomes necessary to fill up their number pursuant to a power for that purpose, usually introduced into settlements of real property. In order to effect this it is now the practice for the old trustees to make a conveyance, which operates by way of transmutation of possession (either by release or grant) to the new trustees and their heirs, to the use of the old and new trustees and their heirs. Without the assistance, therefore, of the Statute of Uses, it would have been necessary in the above case that the old trustee should have first enfeoffed A., who would have re-enfeoffed the old and new trustees jointly: thereby making two conveyances necessary. Indeed, in the case of terms of years, and other personal property, two assignments were required for this purpose, until 22 & 23 Vict. c. 35, s. 21.

(2) A conveyance could not have been made by a husband to his wife, but now by limiting a seisin to the grantee or releasee, the husband may declare the use to his wife, which the statute will execute.

(3) A man could not make his own heir a purchaser, even of an estate tail, for *filius est pars patris—hæres est pars antecessoris*: but now a man may limit the use so as to make his heirs special take, either by purchase or descent.

(4) No person could take a present interest in the *habendum* of a deed who was not named in the premises. But in a case where A. enfeoffed B., *habendum* to the said B. and C., their heirs and assigns, to the use and behoof of the said B. and C., their heirs and assigns, it was resolved that, as C. was not named in the premises, he could take no *possession* originally by the *habendum*; and that the livery, made according to the intent of the indenture, did not give anything to C., because as to him it was void; but though the feoffment did not give any *seisin* to C., yet it did to B. and his heir, which *seisin* was sufficient to serve the use declared to C. Therefore the use limited to B. and C. was good, and the statute executed it. But this limitation of the use in a bargain and sale to a person not named in the premises, after a previous disposition of it to the bargainee, would be void, for the reasons before mentioned.

(5) So it is a rule of law, that if an estate be conveyed to two, the one being capable and the other incapable at the time of the grant, he who is capable shall take the whole, and that *joint tenants* cannot take at different periods. But since the introduction of uses, if A. makes a feoffment in fee, to the use of B. and his wife that shall be, though the whole estate will vest in B. at first, yet upon his marriage the wife shall take jointly with him. So if a disseisin be had to the use of two, and the one agrees to it at one time, and the other at another, they shall be *joint tenants*.

(6) An estate of freehold cannot be granted at the Common Law, to commence *in futuro*, nor can a contingent remainder be supported, without an express particular estate of freehold; but by a conveyance under the Statute of Uses, a freehold can be created to commence *in futuro*, and future limitations will be supported when no particular estate has been made, either as remainders or springing uses.

(7) An estate cannot at the Common Law be limited upon a fee-simple, i.e., a fee-simple cannot be made to cease as to one, and take effect by way of limitation upon a contingent event in favour of another person; but such a limitation may take effect by way of shifting or springing use. A shifting or springing use, after a previous limitation of the fee, cannot be barred by the *cestui que use* by any kind of conveyance, but where it is limited upon an estate-tail the tenant-in-tail may bar it.

(8) Every remainder, at the Common Law, must be limited, so as to await the determination of the particular estate, before it can take effect in possession; but an abridgment of the particular estate, upon a certain condition, can be effected by a conveyance to uses, so as to accelerate the expectant estate into possession.

Use and Occupation, Action for, an action for damages due on an *implied* agreement to pay for the use of a landlord's property; it lay at Common Law (*Gibson* v. *Kirk*, 1 *Q. B.* 850), except where there had been an actual demise.

And by 11 Geo. II. c. 19, s. 14, it is enacted, that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant in an action on the case, *for the use or occupation of* what was so held or enjoyed; and if in evidence on the trial of such action, *any parole demise, or any agreement* (not being by deed) whereon a certain rent was reserved, *shall appear, the plaintiff in such action shall not therefore be non-suited*, but may make use thereof as an evidence of the *quantum* of the damages to be recovered. —*Woodf. Land. & Ten.*, 14th ed., c. 14.

User de action, the pursuing or bringing an action in the proper county, etc.—*Broke* 64.

Usher [fr. *huis*, Fr., a door], a door-keeper, an officer who keeps silence in a court. The office of Usher of the Court of Chancery is abolished by 15 & 16 Vict. c. 87, s. 27.

Usque ad filum aquæ, or viæ [Lat.] (*even to the middle of the stream or road*).

Usual Covenants, covenants usually inserted in deeds having a similar scope to that in respect of which a question arises. The phrase occurs most frequently in connection with agreements for leases stipulating that the lease when granted shall contain 'all usual covenants.' What these are is a question of fact, but it may perhaps be laid down that at the present day covenants by the lessee to pay rent, to pay taxes, and to repair, and a qualified covenant by the lessor for quiet enjoyment (see that title), are usual, but that no others are, and in particular that the covenant not to assign or underlet without the leave of the lessor is not. See per Jessel, M. R., in *Hampshire* v. *Wickens*, 7 *Ch. D.* 555, and see too Woodfall, L. & T. 14th ed., ch. iv., sect. 7.

A proviso for re-entry on breach of covenants generally is not 'usual,' but a proviso for re-entry on breach of the covenant to pay rent is. See per James, L. J., in *Hodgkinson* v. *Crowe*, *L. R.* 10 *Ch.* 222.

Usual terms, a phrase in the Common Law practice, which meant pleading issuably, rejoining gratis, and taking short notice of trial. When a defendant obtained further time to plead these were the terms usually imposed.

Usucapio, the enjoying, by continuance of time, a long possession or prescription; property acquired by use or possession.—*Civ. Law.*

Usucapio constituta est ut aliquis litium finis esset.—(The object of *usucapio* (title by quiet possession) is to put an end to litigation.) See *Sand. Just.*, 7th ed., 136, and *Broom's Leg. Max.*, 6th ed., 846 (*k*), and 3 *Br. & Had. Com.*, 270, 271.

Usufruct, the right of reaping the fruits (*fructus*) of things belonging to others, without destroying or wasting the subject over which such right extends.—*Ibid.*

Usufructuary, he who enjoys the usufruct. See preceding title.

Usura est commodum certum quod propter usum rei (vel æris) mutuatæ recipitur; sed, secundariò sperare de aliquâ retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum. 5 Co. 70.—(Usury is a certain benefit which is received for the use of a thing (or of money) lent; but, secondly, to hope for a certain return, at the option of the party who borrowed, this is not vicious.) See USURY.

Usura maritima [*fœnus nauticum*, Lat.], interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and was not affected by the abolished usury laws. —19 *Geo. III.* c. 37; 2 *Steph. Com.*

Usurpation, a keeping or holding by using that which is another's; an interruption of usucapio, or disturbing a man in his right and possession, etc. It is called *intrusion* in the civil and canon laws.—*Sand. Just.*, 7th ed., 146.

Usury, any reward taken for the use of money. The term is usually applied to the taking of exorbitant interest, or of interest to a greater amount than is allowed by law. The many statutes at different times passed fixing the legal rights of interest were all repealed by 17 & 18 Vict. c. 90, but the interest which pawnbrokers may take is still restricted by law. See PAWNBROKERS.

Usus est dominium fiduciarium. Bacon's Read. Stat. Uses.—(Use is a fiduciary dominion.)

Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei. Ibid.—(Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.)

Utas [*octaves*, Fr.], the eight days following any term or feast. See, e.g., 2 Hen. IV.

Uterine brother [*uterinus frater*, Lat.], a brother born of the same mother; *frater consanguineus* is the son of the same father.

Utero-gestation, pregnancy.

Utfangethef. See OUTFANGTHEF.

Utile per inutile non vitiatur. Dyer, 392. —(The useful is not vitiated by the useless.)

Uti possidetis [Lat.] (*as you possess*).

Utlagatus est quasi extra legem positus: caput gerit lupinum. 7 Co. 14.—(An outlaw is, as it were, put out of the protection of the law: he bears the head of a wolf.)

Utlagatus pro contumaciâ et fugâ, non propter hoc convictus est de facto principali. Fleta.—(One who is outlawed for contumacy and flight is not on that account convicted of the principal fact.)

Utlagus [fr. *utlagatus*, Lat.], an outlaw.

Utland, tenemental land. *Spelm.*, *s.v.* '*Inland.*'

Utlesse, an escape of a felon out of prison.

Ut pœna ad paucos, metus ad omnes perveniat. 4 Inst. 6.—(So that punishment may fall on few, the fear of it on all.)

Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit. 3 Inst. 236.—(As the highest power of a king is to be able to do all he wishes, so the

highest greatness of him is to wish all he is able to do.)

Utter barristers, barristers who plead without the bar; all such counsel as are not either Queen's Counsel or Sergeants-at-law. See the explanation given by *Cowel.*

Uttering, tendering; selling; putting in circulation; publishing. Knowingly uttering counterfeit coin is a misdemeanour, and after two prior convictions a felony, by 24 & 25 Vict. c. 99, s. 21.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir. 3 Inst. 108. —(A woman married to a thief shall not be bound by his actions, for she cannot accuse her husband, nor discover the robbery or felony, since she has no power over herself, but her husband has power over her.)

Uxor non est sui juris, sed sub potestate viri, cui in vitâ contradicere non potest.—(A wife has no power of her own, but is under the government of her husband, whom in his lifetime she cannot contradict.) See HUSBAND AND WIFE.

V.

Vacant possession, in action for recovery of land. See R. S. C. 1883, Ord. IX., r. 9, as to mode of service of writ.

Vacant succession, an inheritance the heir to which is unknown.

Vacantia bona, things without an owner; the goods of one dying without successors. —*Civ. Law.*

Vacation. By Ord. LXIII., r. 4, it is provided that 'the vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year—viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.' And see LONG VACATION.

The County Courts are, by s. 11 of the County Courts Act, 1888, as a rule, wholly closed during the month of September.

Vacation sittings. Under the Jud. Act, 1873, s. 28, and R. S. C. 1883, Ord. LXIII., r. 11, two 'vacation judges' of the High Court sit during vacations, for the hearing of such applications as may require to be immediately or promptly heard.

Vacatura, an avoidance of an ecclesiastical benefice.—*Cowel.*

Vaccaria, a dairy.—*Co. Litt.* 5 *b.*

Vaccination. The various enactments on this subject prior to 1867 were repealed by the Vaccination Act of that year (30 & 31 Vict. c. 84), by which it is provided *inter alia* that the parent of every child born in England shall, within three months after the birth of such child, or where by reason of the death, illness, absence, or inability of the parent or other cause, any other person shall have the custody of such child, such person shall, within three months after receiving the custody of such child, take it, or cause it to be taken to the public vaccinator of the vaccination district in which it shall be then resident, to be vaccinated, or shall within such period as aforesaid cause it to be vaccinated by some medical practitioner (s. 16). See also 34 & 35 Vict. c. 98; 37 & 38 Vict. c. 75; *Fry's Vaccination Acts*; and *Chit. Stat.*, vol. 6, tit. '*Vaccination.*'

Vackeel, Vakeel, Vaqueel, one endowed with authority to act for another; ambassador; agent sent on a special commission, or residing at a court; also a native law pleader or attorney.—*Indian.*

Vadiare duellum (*to wage combat*), where two contending parties, on a challenge, do give and take a mutual pledge of fighting.—*Cowel.*

Vadium [fr. *vas vadis,* Lat.], a pledge or surety.—*Civ. Law.*

Vadium mortuum, a mortgage or dead-pledge.

Vadium ponere, to take bail or pledges for a defendant's appearance.

Vadium vivum, a vifgage or living pledge. See VIVUM VADIUM.

Vadlet, the king's eldest son—hence the valet or knave follows the king and queen in a pack of cards.—*Barr. on Stat.* 344.

Vagabond, a wanderer; an idle fellow. See 23 Edw. III. c. 7; 12 Ric. II. c. 7; 11 Hen. VII. c. 2; 19 Hen. VII. c. 12; 22 Hen. VIII. c. 12; 27 Hen. VIII. c. 25; 1 Edw. VI. c. 3; 3 & 4 Edw. VI. c. 16; 5 & 6 Edw. VI. c. 2; 5 Eliz. c. 3; 14 Eliz. c. 5; 18 Eliz. c. 3; 35 Eliz. c. 5, s. 24; 39 Eliz. c. 4; 1 Jac. I. cc. 7. 25; 12 Anne st. 2, c. 23; and 5 *Reeves,* c. 33, p. 14, See further, 4 *Br. & Had. Com.*, 204, 205; *Steph. Com.* 7th ed., iii. 57, 122; iv. 287; and VAGRANTS.

Vagrants, sturdy beggars; vagabonds.

The Act which is now in force, embodying and extending numerous former provisions, is 5 Geo. IV. c. 83, extended by 1 & 2 Vict. c. 38, 36 & 37 Vict. c. 38, and the Casual Poor Act, 1882, 45 & 46 Vict. c. 36 (see CASUAL PAUPER). It points out three classes of persons:—

1st, Idle and disorderly persons; 2nd, rogues and vagabonds; 3rd, incorrigible rogues.

First. *Idle and Disorderly Persons.*—The

following are, under 5 Geo. IV. c. 83, s. 3, to be deemed 'idle and disorderly persons,' so that any justice of the peace may commit them (being convicted before him) to the house of correction to hard labour for not more than *one* month, subject to an appeal to the sessions, viz. :—(1) Every person able to maintain himself or his family, and wilfully refusing or neglecting so to do, whereby he or any of his family whom he is bound to maintain shall become chargeable to any parish. (2) Every person returning to and becoming chargeable in any parish, etc., whence he, etc., shall have been removed by order of two justices, unless he, etc., produce a certificate of the churchwardens and overseers of the poor of some other parish, etc., acknowledging him, etc., to be settled in such parish, etc. (3) Every pedlar wandering abroad, and trading without license. (4) Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous and indecent manner. (5) Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg, or gather alms, or procuring children so to do. (6) Every person relieved in a workhouse, and refusing or neglecting while therein to perform the task prescribed by the guardians of the parish or union, if suited to his age and strength, or wilfully destroying or injuring his clothes, or damaging property of the guardians. (7) Every woman neglecting to maintain her bastard child, being able so to do, whereby it becomes chargeable to any parish or union.

Secondly. *Rogues and Vagabonds.*—The following are, by 5 Geo. IV. c. 83, s. 4, to be deemed as 'rogues and vagabonds,' whom it is lawful for any justice to commit (being convicted before him) to the house of correction, to hard labour for not more than *three* months, subject, as in the case of idle and disorderly persons, to an appeal to the sessions, viz. :—

(1) Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person. (2) Every person pretending to tell fortunes, or using any craft or device by palmistry, or otherwise (this includes 'Spiritualism.'—*Monck* v. *Hilton*, 2 *Ex. D.* 268), to deceive and impose on any of Her Majesty's subjects. (3) Every person wandering abroad, or lodging in any barn or outhouse, or in any deserted or unoccupied buildings, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself. (4) Every person unlawfully exposing to view in any street, or shop in any street, road, or public place, any obscene picture, or other indecent exhibition. (5) Every person wilfully exposing his person in any street, etc., or in any place of public resort, with intent to insult any female. (6) Every person wandering abroad, and endeavouring, by the exposure of wounds or deformities, to obtain alms. (7) Every person endeavouring to procure charitable contributions of any kind, under any false pretence. (8) Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby they become chargeable to any parish, etc. (9) Every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance. (10) Every person having in his possession any pick-lock, etc., or other implement, with intent feloniously to break into any dwelling-house, etc., or being armed with any gun, etc., or other offensive weapon, or having upon him any instrument with intent to commit any felonious act. (11) Every person being found in any dwelling-house, etc., or in any enclosed yard, garden, or area, for any unlawful purpose. (12) Every suspected person or reputed thief frequenting any river, canal, etc., or any street, highway, etc., or any place of public resort, with intent to commit felony. (13) Every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted thereof.

Thirdly. *Incorrigible Rogues.*—The following persons are by 5 Geo. IV. c. 83, s. 5, to be deemed 'incorrigible rogues' under the Act :—(1) Every person escaping out of any place of legal confinement before the expiration of the term for which he shall have been committed thereto by the Act. (2) 'Every person committing any offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof.' (3) And every person apprehended as a rogue and vagabond, and violently resisting any constable apprehending him, and subsequently convicted of the offence for which he was so apprehended. As to incorrigible rogues it is enacted, that it shall be lawful for any justice to commit such offender (being thereof convicted before him) to the house of correction, there to remain until the next general or quarter-sessions of the peace, at which sessions the justices may examine

into the case, and order that such offender be imprisoned and kept to hard labour for *one year* or less; and further, that such offender (not being a female) be punished *by whipping*, at such time during his imprisonment, and at such place within their jurisdiction, as they deem expedient.

By 36 & 37 Vict. c. 38, s. 3, persons gaming with coin, etc., in streets, or public places, are to be deemed rogues and vagabonds, and may be punished under the Act 5 Geo. IV. c. 83, or by a penalty for the first offence not exceeding 40*s.*; and for the second or any subsequent offence not exceeding 5*l.*; and by the Casual Poor Act, 1882, 45 & 46 Vict. c. 36 (see CASUAL PAUPER), any person making a false statement for the purpose of obtaining relief out of the poor is to be deemed an 'idle and disorderly person.'

Valeat quantum, let it have its weight, small or great.

Valec, Valect, or **Vadelet**, a young gentleman; also a servitor or gentleman of the chamber.—*Cowel.*

Valentia, the value or price of anything.

Valesheria, the proving by the kindred of the slain, one on the father's side, and another on that of the mother, that a man was a Welshman.

Valor beneficiorum, the value of every ecclesiastical benefice and preferment, according to which the first-fruits and tenths are collected and paid. It is commonly called the *King's books*, by which the clergy are at present rated.—2 *Steph. Com.*

Valor maritagii (*the value of marriage*). See TENURE.

Valuable consideration. See CONSIDERATION.

Valuation List, a list of all the ratable hereditaments in a parish, showing the names of the occupier, the owner, the property, the extent of the property, the gross estimated rental, and the ratable value;—prepared by the overseers of each parish in a union under s. 14 of the Union Assessments Committee Act, 1862, 25 & 26 Vict. c. 103, for the purposes of the poor rate. The list is revised by an 'assessment committee' appointed by the board of guardians of each union. In the *metropolis*, by s. 43 of the Metropolis Valuation Act, 1869, 32 & 33 Vict. c. 67, a valuation list (subject as in the Act mentioned) lasts for five years from its approval by the assessment committee, and by s. 45 is *conclusive* for the purposes of rates (not including water rates) and taxes and property qualifications generally.

Value, a relative term. The value of a thing means the quantity of some other thing, or of things in general, which it exchanges for. The value of all things can never, therefore, rise or fall simultaneously. There is no such thing as a general rise or a general fall of values. Every rise of value supposes a fall, and every fall a rise.

The temporary or market value of a thing depends on the demand and supply—rising as the demand rises, and falling as the supply rises. The demand, however, varies with the value, being generally greater when the thing is cheap than when it is dear: and the value always adjusts itself in such a manner that the demand is equal to the supply.

Besides their temporary value, things have also a permanent, or, as it may be called, a natural value, to which the market value after every variation always tends to return; and the oscillations compensate for one another, so that on the average, commodities exchange at about their natural value.

The natural value of some things is a scarcity value, but most things naturally exchange for one another, in the ratio of their cost of production, or at what may be termed their cost value.

The word 'value,' when used without adjunct, always means, in political economy, value in exchange; or, as it has been called by Adam Smith and his successors, exchangeable value, a phrase which no amount of authority that can be quoted for it can make other than bad English. Mr. De Quincey substitutes the term 'exchange value,' which is unexceptionable.—1 *Mill's Pol. Eco.* 528, 578.

The word 'value,' it is to be observed, has two different meanings, and sometimes expresses the utility of some particular object, and sometimes the power of purchasing other goods which the possession of that object conveys. The one may be called 'value in use'; the other 'value in exchange.' The things which have the greatest value in use have frequently little or no value in exchange; and, on the contrary, those which have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water, but it will purchase scarce anything; scarce anything can be had in exchange for it. A diamond, on the contrary, has scarce any value in use, but a very great quantity of other goods may frequently be had in exchange for it.—1 *Smi. Wealth of Nat.* 37.

Valued policy, a policy of insurance in which the sum at which the subject of the policy is insured is expressed, instead of being left in blank (as in the case of an open policy), and so the value in case of loss need not (as a general rule) be proved.—See *Arnould on Marine Insurance*, 6th ed., 298, *et. seq.*

Value received, a phrase generally inserted

in bills of exchange, but which is not necessary, since value is implied in every bill, as much as if expressed *in totidem verbis*.—*White* v. *Ledwick*, 4 *Doug.* 247; *Byles on Bills*, 11th ed., 85.

Valuer, a person whose business is to appraise, or set a value upon property.

Valvasors, or **Vidames**, an obsolete title of dignity next to a peer.—2 *Inst.* 667; 2 *Steph. Com.*

Vana est illa potentia quæ nunquam venit in actum. 2 Co. 51.—(Vain is that power which never comes into play.)

Vancouver's Island. See 12 & 13 Vict. c. 48; 21 & 22 Vict. c. 99, s. 6; 29 & 30 Vict. c. 67; and 33 & 34 Vict. c. 66.

Van Diemen's Land. See TASMANIA.

Vang [Sax.], to stand for one at the font. —*Blount.*

Vani timores sunt æstimandi, qui non cadunt in constantem virum. 7 Co. 27.—(Those fears are to be counted vain which affect not a resolute man.)

Vantarius, a precursor.—*Cowel.*

Varectum. See WARECTUM.

Variance, difference between the statements in the pleadings and the evidence adduced in proof thereof.

The Courts are now very liberal in permitting variances in proceedings to be amended, especially where parties will suffer no prejudice. As to amendments at *Nisi Prius*, see 1 *Chit. Arch. Pr.*, 12th ed., 400. See also title AMENDMENT.

Vassal [fr. *vassallo*, Ital., a dim. of *vassus*, low Lat. Wachter refers it to the Gallic *gwas*, a servant], one who holds of a superior lord; a subject; a dependent; a tenant or feudatory.—1 *Steph. Com.*

Vassalage, the state of a vassal; tenure at will; slavery.

Vasseleria, the tenure or holding of a vassal.—*Cowel.*

Vasto, a writ against tenants for term of life or years committing wastes.—*F. N. B.* 55.

Vastum, a waste or common lying open to the cattle of all tenants who have a right of commoning.—*Cowel.*

Vastum forestæ vel bosci, that part of a forest or wood wherein the trees and underwood were so destroyed, that it lay, in a manner, waste.—*Paroch. Antiq.* 351.

Vauderie, sorcery; witchcraft; the profession of the Vaudois.—3 *Hallam's Mid. Ages*, c. 9, pt. 2, p. 386 n.

Vavasory, lands held by a vavasour.—*Cowel.*

Vavasour, one who, himself holding of a superior lord, has others holding under him; a person *magnæ dignitatis*, so called *tanquam Vas sortitum ad valetudinem*.—*Camden.* See, too, *Reeves*, c. 5, p. 26; and *Cowel.*

Veal-money. The tenants of the manor of Bradford, in the county of Wilts, paid a yearly rent by this name to their lord, in lieu of veal paid formerly in kind.—*Bract.*

Vectigal judiciarium, fines paid to the Crown to defray the expenses of maintaining courts of justice.—3 *Salk.* 33.

Vectigal, origine ipsâ, jus Cæsarum et regum patrimoniale est. Dav. 12.—(Tribute, in its origin, is the patrimonial right of emperors and kings.)

Vejours [*visores*, Lat.], persons sent by a Court to take a view of any place in question, for the better decision of the right thereto; also, persons appointed to view the result of an offence.—*O. N. B.* 112.

Velindre, the Welsh word for vill. 4. T. R. 552, note (b).

Veltraria, the office of dog-leader or courser. —*Cowel.*

Veltrarius [fr. *velter*, Germ.], one who leads greyhounds.—*Blount.*

Venaria, beasts caught in the woods by hunting.

Venatio, hunting.—*Cowel.*

Vendee, one to whom anything is sold.

Vendition, sale, the act of selling.

Venditioni exponas, a judicial writ addressed to the sheriff, commanding him to expose to sale goods which he has already taken into his hands, to satisfy a judgment-creditor.—*Reg. Judic.* 33. After delivery of this writ, the sheriff is bound to sell the goods, and have the money in court on the return day of the writ.—3 *Steph. Com.*

By R. S. C. 1883, Ord. XLIII., r. 2, this writ may be sued out where it appears upon the return of a *fi. fa.* that the sheriff has seized goods but not sold them.

Vendor, one who sells anything.

Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), as amended by ss. 48 & 129 of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), reciting that it is expedient to facilitate the transfer of land by means of certain amendments in the law of Vendor and Purchaser, provides that in the completion of any contract of sale of land made after the 31st December, 1874, and subject to any stipulation to the contrary in the contract, 40 years is to be substituted for 60 years as the period of commencement of title which a purchaser may require, saving those cases in which an earlier title than 60 years might formerly have been required (s. 1).

The Act also provides certain rules by which, subject to stipulations in the contract, the obligations and rights of vendors and purchasers are to be regulated, and especially that documents twenty years old shall be *primâ facie* proof of facts stated in them

(s. 2); and trustees are allowed to sell or buy without excluding the application of those rules (s. 3). The legal personal representative of a mortgagee is allowed to convey the mortgaged estate (s. 4); on the death of a bare trustee intestate, any hereditament of which he was seised in fee simple is to vest in his legal personal representative, like a chattel real (s. 5).

The Act also contains provisions for curing the non-registration of wills in Middlesex and Yorkshire in certain cases (s. 8); and for allowing a vendor or purchaser to obtain the decision of a judge in chambers on questions arising from the contract of sale (s. 9). See further, CONDITIONS OF SALE; CONVEYANCING ACT; and consult *Dart on Vendors and Purchasers*, ed. 6.

Vendue master, an auctioneer.

Venella, a narrow or strait way.—*Monast.* i., 488.

Venia, a kneeling or low prostration on the ground by penitents; pardon.

Veniæ facilitas incentivum est delinquendi. 3 Inst. 236.—(Facility of pardon is an incentive to crime.)

Venia ætatis, a privilege granted by a prince or sovereign, in virtue of which a person is entitled to act, *sui juris*, as if he were of full age.—*Story's Confl. of Laws*, 74.

Venire facias, a judicial writ awarded to the sheriff to summon a jury for the trial of a cause, but abolished by C. L. P. Act, 1852, s. 104. It is the first process in outlawry, when a person charged with a misdemeanour absconds.—4 *Steph. Com.*

Venire facias de novo, a second writ to summon another jury for a new trial.

The *venire de novo* was the old Common Law mode of proceeding to a second trial, and differed materially from granting a new trial, inasmuch as it was awarded from some defect appearing upon the face of the record, while a new trial was granted for matter entirely extrinsic. Where a verdict could have been amended, a *venire de novo* was never awarded. If awarded, the party succeeding at the second trial was not entitled to the costs of the first. It has since been superseded by a trial *de novo.* —2 *Chit. Arch. Prac.*, 12th ed., 1549. See also NEW TRIAL.

Venire facias tot matronas, a writ to summon a jury of matrons to execute the writ *de ventre inspiciendo.*

Venter, womb.

Ventre inspiciendo. See DE VENTRE INSPICIENDO.

Venue [fr. *vicinetum visnetum*, Lat.], the place whence a jury are to come for trial of causes.

Local actions must, before the Jud. Act, have been brought in the county in which the cause of action arose; but transitory actions in any county at the plaintiff's option; and no venue could be changed without a special order of the court or a judge, unless by consent of the parties.—*H. T.* 1853, r. 18.

It is, however, provided by R. S. C. 1883, Ord. XXXVI., r. 1, that there shall be no local venue for the trial of any action, 'except where otherwise provided by statute; and by the same rule, that when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named.

In criminal cases, the rule of the Common Law is that the venue shall be co-extensive with the jurisdiction of the Court. By the Common Law the grand jury could not indict or present any offence which did not arise within the county or the precincts for which they were returned, but their jurisdiction has been extended by several modern statutes. It is provided by 14 & 15 Vict. c. 100, s. 23, that the name of the county, city, or other jurisdiction, shall be stated in the margin of the indictment, and that the name so stated shall be taken to be the venue of all the facts stated in the body of such indictment, unless the contrary shall expressly appear; but in cases where local description is necessary, this provision does not dispense with such description, and by s. 24 no indictment shall be held insufficient for want of a proper or perfect venue. Local description is necessary in the following offences:—Nuisance to highways, keeping disorderly houses, arson, burglary, house-breaking, stealing in a dwelling-house, forcible entry, being armed at night in a close for the purpose of killing game, etc., and certain offences against 14 & 15 Vict. c. 19.

As to the venue in proceedings against persons for anything done in pursuance of the Larceny Act, see s. 113 of 24 & 25 Vict. c. 96, or of the Malicious Injuries to Property Act, see s. 71 of 24 & 25 Vict. c. 97, or of the Coinage Act, see s. 33 of 24 & 25 Vict. c. 99.

By the Judicature Act, 1875, s. 23 (4), the Queen may by Order in Council from time to time provide for the regulation, so far as may be necessary for carrying into effect any order made under the other parts of that section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Veray, true.

Verba accipienda sunt cum effectu—ut sortiantur effectum. Bacon.—(Words are to be received with effect—so that they may produce effect.)

Verba accipienda sunt secundum subjectam materiem. 6 Rep. 62.—(Words are to be understood with reference to the subject-matter.) See SECUNDUM SUBJECTAM MATERIEM.

Verba æquivoca ac in dubio sensu posita intelliguntur digniore et potentiore sensu. 6 Co. 20.—(Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.)

Verba aliquid operari debent—debent intelligi ut aliquid operentur. 8 Co. 94.—(Words ought to have some operation—they ought to be interpreted in such a way as to have some operation.)

Verba chartarum fortius accipiuntur contra proferentem. Co. Litt. 36.—(The words of charters are to be received more strongly against the grantor.)

Verba cum effectu accipienda sunt. Bac. Max. Reg. 3.—(Words ought to be used so as to give them their effect.)

Verba currentis monetæ tempus solutionis designant. Dav. 20.—(The words 'current money' designate current at the time of payment.)

Verba de futuro. See PER VERBA, etc.

Verba de præsenti. See PER VERBA, etc.

Verba dicta de personâ intelligi debent de conditione personæ. 2 Rol. Rep. 72.—(Words spoken of the person are to be understood of the condition of the person.)

Verba generalia generaliter sunt intelligenda. 3 Inst. 76.—(General words are to be generally understood.)

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ. Bacon.—(General words must be narrowed to the nature of the subject or the aptitude of the person.)

Verba illata inesse videntur.—(Words referred to are considered to be incorporated.)

Verba intentioni non è contra debent inservire. 8 Co. 94.—(Words ought to be made subservient to the intent, not contrary to it.)

Verba ita sunt intelligenda ut res magis valeat quam pereat. Bacon.—(Words are to be so understood as that the subject matter may be rather preserved than destroyed.)

Verba posteriora, propter certitudinem addita, ad priora quæ certitudine indigent sunt referenda. Wing. Max. 167.—(Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.)

Verba relata hoc maximè operantur per referentiam ut in eis inesse videntur. Co. Litt. 359.—(Words to which reference is made in an instrument have this especial operation, that they are regarded as inserted in the clause referring to them.)

Verba semper accipienda sunt in mitiori sensu. 4 Co. 17.—(Words are always to be taken in their milder sense.)

Verbal note, a memorandum or note, in diplomacy, not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency which, perhaps, is not required; and, on the other hand, to guard against the supposition that it is forgotten, or that there is an intention of not prosecuting it any further.

Verderer, an officer in the royal forest, whose office is properly to look to the vert, and see it well maintained; and he is sworn to keep the assizes of the forest, and view, receive, and enrol the attachments, and presentments of trespasses of vert and venison, etc.—*Manw.* 332.

Verdict [fr. *vere dictum*, Lat.], the determination of a jury declared to a judge.

The verdict is either general or special. A general verdict is given, *vivâ voce*, by the jury, thus, 'We find for the plaintiff, damages ——,' or, if for the defendant, then, 'We find for the defendant.' If there be several issues, the verdict may be distributed, some issues being found for the plaintiff and others for the defendant. A verdict must comprehend the whole issues submitted to a jury in the particular cause, otherwise the judgment founded upon it may be reversed. See SPECIAL VERDICT; PERVERSE VERDICT.

Veredictum, quasi dictum veritatis: ut judicium quasi juris dictum. Co. Litt. 226.—(The verdict is, as it were, the dictum of truth: as the judgment is the dictum of law.)

Verge, or **Virge,** the compass of the Queen's court, which bounds the jurisdiction of the lord steward of the household; it seems to have been twelve miles about.—*Brit.* 68. A quantity of land from fifteen to thirty acres. —28 *Edw. I.* Also, a stick, or rod, whereby one is admitted tenant to a copyhold estate. —*O. N. B.* 17.

Vergelt, the Saxon fine for a crime. See WERGILD.

Vergers [*portatores virgæ*, Lat.; *bedeaux d'église*, Fr.], those who carry white wands before the judges, or before church dignitaries.—*Fleta*, l. 2, c. 38; *Cowel.*

Verification, the proper form of concluding (under the old system of pleading) any pleading after the declaration alleging new matter. It was made in the words, '*And this he is ready to verify.*' It was rendered unnecessary by C. L. P. Act, 1852, s. 67. See now PLEADING.

Veritas, à quocunque dicitur, à Deo est. 4 Inst. 153.—(Truth, by whomsoever pronounced, is from God.)

Veritas demonstrationis tollit errorem nominis. 1 Ld. Raym. 303.—(The truth of the demonstration removes the error of the name.)

Veritas nihil veretur nisi abscondi. 9 Co. 20.—(Truth fears nothing but concealment.)

Veritas nimium altercando amittitur. Hob. 344.—(By too much altercation truth is lost.)

Veritas, quæ minime defensatur, opprimitur; et qui non improbat, approbat. 3 Inst. 27.—(Truth which is not sufficiently defended, is overpowered; and he who does not disapprove, approves.)

Veritatem qui non liberè pronunciat, proditor est veritatis. 4 Inst. Epil.—(He who does not freely speak the truth, is a betrayer of truth.)

Verna, a slave born in his master's house. —*Civ. Law.*

Versus [Lat.], abbrev. *v.* (*against*).

Vert [fr. *verd*, Fr.; *viridis*, Lat.], otherwise called *greenhue*, everything that bears a green leaf within a forest that may cover a deer; but especially great and thick coverts.

Manwood (part 2, p. 33) divides vert into overt-vert and nether-vert—the *overt-vert* is that which is termed *haut-boys*, and *nether-vert*, *sub-boys*—and into *special vert*, which is, all trees growing within the forest that bear fruit, to feed deer, because the destroying of it is more grievously punished than of any other vert. See 3 *Steph. Com.*; *Cowel.* And see per *Bacon, V.-C.*, in *Earl De la Warr* v. *Miles*, 17 *Ch. D.* at p. 570.

Also, that power which a man has, by royal grant, to cut green-wood in a forest.

Also green colour, called *Venus* in the arms of princes, and *Emerald* in those of peers, and expressed in engravings by lines in bend.—*Heraldic term.*

Very lord and very tenant [*verus dominus et verus tenens*, Lat.], they that are immediate lord and tenant one to another.—*Broke.*

Vest. 1. (*v.a*), to place in possession; to make possessor of; to give an interest in property when a named period or event occurs. 2. (*v.n*) (of a right or interest) to come into the possession of any one; to enure to the benefit of any one.

Vesta, the crop on the ground.—*Cowel.*

Vested in interest, a legal term applied to a present fixed right of future enjoyment, as reversions, vested remainders, such executory devises, future uses, conditional limitations, and other future interests as are not referred to, or made to depend on, a period or event that is uncertain.

Vested in possession, a legal term applied to a right of present enjoyment actually existing.

Vested legacy. See LEGACY.

Vested remainder, an expectant estate, which is limited or transmitted to a person who is capable of receiving the possession, should the particular estate happen to determine; as a limitation to A. for life, remainder to B. and his heirs; here, as B. is in existence he is capable (or his heirs, if he die) of taking the possession whenever A.'s death may occur. A vested estate may take effect though the preceding estate be defeated, as when an infant makes a lease for life with a remainder over, and on majority he disagrees to the estate for life, yet the remainder is good, having been duly vested by a good title.—*Fearne, C. R.* 308; 1 *Steph. Com.*

The person who is entitled to a vested remainder having a present vested right of future enjoyment, i.e., an estate *in præsenti*, to take effect in possession and pernancy of the profits *in futuro*, can transfer, alien, and charge it much in the same manner as an estate in possession.—2 *Cru. Dig.* 204.

Vesting order. The Court of Chancery had, and the Chancery Division of the High Court of Justice now has, the power of granting an order passing the legal estate in lieu of a conveyance. Also commissioners appointed by several modern statutes have the powers, by vesting order, to transfer legal estates without the necessity of a deed of transfer.

Vesting Orders may be made under the Charitable Trusts Act, 16 & 17 Vict, c. 137, ss. 48—50; 18 & 19 Vict. c. 124, ss. 15, 19; 23 & 24 Vict. c. 136, s. 2:—under the Land Registry Act, 25 & 26 Vict. c. 53, s. 45 *et seq*:—under the Trustee Acts, 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55:—and under the Titles of Religious Congregations Act, 13 & 14 Vict. c. 28.

Vestry, or **Vestiary,** a place or room adjoining to a church, where the vestments of the minister are kept; also, a parochial assembly, commonly convened in the vestry, to transact the parish business. By custom in some parishes, and by the 'Adoptive' Act, 1 & 2 Wm. IV. c. 60, in others, a select number of parishioners is chosen yearly to manage the concerns of the parish for that year. They are called a *select vestry*. See *Chitty's Statutes*, vol. 6, tit. '*Vestry*'; and *Steer's Parish Law.*

In the *Metropolis*, the Act 1 & 2 Wm. IV. c. 60 does not apply, the vestries being elected under the Metropolis Management Act, 1855, 18 & 19 Vict. c. 120.

Vestry Cess, a rate levied in Ireland for parochial purposes, abolished by 27 Vict. c. 17.

Vestry Clerk, an officer appointed to attend vestries, and take an account of their proceedings, etc. See 13 & 14 Vict. c. 57, ss 6—8.

Vestura, a crop of grass or corn.—*Cowel.* Also a garment metaphorically applied to a possession or seisin.

Vetera Statuta, the ancient statutes commencing with *Magna Charta,* and ending with those of Edward II., including also some which, because it is doubtful to which of the three reigns of Hen. III., Edw. I., or Edw. II. to assign them, are said to be *incerti temporis.*—2 *Reeves,* c. 8, p. 85.

Veterinary Surgeon [fr. *veterinarius,* concerned with *veterinum,* a beast of burden]. A person who treats the diseases or injuries of animals. A Royal College of Veterinary Surgeons was incorporated in 1844, and supplemental charters were granted thereto in 1876 and 1879. The charter of 1876 directed a register of veterinary surgeons to be kept. The Veterinary Surgeons Act, 1881, 44 & 45 Vict. c. 62, regulates the correction of the register, enacts that examinations shall be held in accordance with the charters, and distinguishes between qualified and unqualified practitioners by enacting (sect. 17) that no person not qualified by registration, etc., may recover in any court any charge for performing any veterinary operation, or for giving any veterinary advice.

Vetitum namium, or **Repetitum namium,** a second or reciprocal distress, in lieu of the first, which has been eloigned.

Veto, a prohibition, or the right of forbidding; especially applied to the royal power of refusing assent to a bill in parliament passed by the two houses: '*Le Roy*' or '*La Reyne,' s'avisera.* See 2 *Steph. Com.*

Vexata quæstio [Lat.], an undetermined point, which has been often discussed.

Vexatious Indictments. In order to prevent these, it is provided, by 22 & 23 Vict. c. 17, commonly called the Vexatious Indictments Act, amended by 30 & 31 Vict. c. 35, ss. 1, 2, that no bill of indictment for perjury, conspiracy, indecent assault, or certain other misdemeanours therein named, be presented to a grand jury, unless the prosecutor shall have been bound over by recognizance to prosecute, or unless the person accused has been committed to or detained in custody, or unless the indictment be preferred with the written consent of the Attorney-General.

Vexatious suit, one brought without probable cause, for the purpose of annoyance or oppression.

V.G., *verbi gratiâ,* for the sake of example.

Via, the right to use a way for any purpose.—*Cum. C. L.* 83.

Viability, a capability of living after birth; extra-uterine life.

Viæ servitus (*servitude of way*), a right of way over another's land.

Via Regia, the highway or common road, called the Queen's way, because under her protection it was sometimes called *viâ militaris.*—*Bract.* l. 4.

Via trita est tutissima. 10 Co. 142.—(The trodden path is the safest.)

Via trita via tuta.—(The trodden path is the safe path.) See *Broom's Leg. Max.,* 5th ed., 134.

Vicarius non habet vicarium.—(A delegate cannot have a delegate.) See *Broom's Leg. Max.,* 6th ed., 794.

Vicar, one who performs the functions of another; a substitute. Also, the incumbent of an appropriated or impropriated benefice, as distinguished from the incumbent of a non-appropriated benefice, who is called a rector. See Rector.

Vicarage, the benefice of a vicar; (2) his house. See 31 & 32 Vict. c. 117, s. 2.

Vicar-general, an ecclesiastical officer who assists the archbishop in the discharge of his office.

Vicarial tithes, petty or small tithes payable to the vicar.—2 *Steph. Com.*

Vicario, etc., an ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, etc.—*Reg. Orig.* 147.

Vice-Admiral, an under-admiral at sea, or admiral on the coasts: a naval officer of the second rank.

Vice-Admiralty Courts, tribunals established in Her Majesty's possessions beyond the seas with jurisdiction over maritime causes, including those relating to prize. See 3 *Steph. Com.*

The Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), repealed 2 & 3 Wm. IV. c. 51, and other Acts. Sections 10 & 11 enacted that the matters in respect of which the vice-admiralty courts should have jurisdiction should be as follows:—

(1) Claims for seamen's wages. (2) Claims for master's wages and for his disbursements on account of the ship. (3) Claims in respect of pilotage. (4) Claims in respect of salvage of any ship or of life or goods therefrom. (5) Claims in respect of towage. (6) Claims for damage done by any ship. (7) Claims in respect of bottomry or respondentia bonds. (8) Claims in respect of any mortgage where the ship has been sold by a decree of the vice-admiralty court, and the proceeds are under its control. (9) Claims between the owners of any ship registered in the possession in which the court is established touching the ownership, possession, employment, or earnings of such ship. (10) Claims for necessaries supplied in the possession in which the court is established to any ship of which no owner or part owner is domiciled within the posses-

sion at the time of the necessaries being supplied. (11) Claims in respect of the building, equipping, or repairing, within any British possession, of any ship of which no owner or part owner is domiciled within the possession at the time of the work being done. (12) Cases of the breach of the regulations and instructions relating to Her Majesty's navy at sea. (13) Matters arising out of droits of admiralty. A schedule to the Act contained a list of the vice-admiralty courts to which the Act applied.

The above Act, with other cognate enactments, is repealed by the Colonial Courts of Admiralty Act, 1890, 53 & 54 Vict. c. 27, by which (see s. 17) Vice-Admiralty Courts are abolished, and superseded (see s. 2) by Colonial Courts with unlimited jurisdiction in Admiralty, subject to an appeal (see s. 6) to the Sovereign in Council.

Vice-Chamberlain, a great officer next under the Lord Chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household which is called the chamber above stairs.

Vice-Chancellor [fr. *vice-cancellarius*, Lat.], a sub-chancellor.

Vice-Chancellors in Equity. One was appointed by 53 Geo. III. c. 24, and two more by 5 Vict. c. 5, s. 19. One of them was at one time called Vice-Chancellor of England. Each of them sat separately from the lord chancellor and lords justices, to whom an appeal lay from their decisions. See 14 & 15 Vict. c. 4, and 15 & 16 Vict. c. 80, ss. 52—58. They became judges of the High Court of Justice (Jud. Act, 1873, s. 5), retaining their titles, but it was enacted that on the death or retirement of any one of them his successor will be styled a 'Judge' (*Ibid.*, s. 5). See HIGH COURT OF JUSTICE; JUDGES.

Vice-Chancellor of the Universities. See CHANCELLOR OF THE UNIVERSITIES.

Vice-comes, a viscount; a sheriff.

Vicecomes dicitur quod vicem comitis supplet. Co. Litt. 168.—('Vicecomes' (*sheriff*), is so called, because he supplies the place of the 'comes' (*earl*).)

Vice-comes non misit breve [Lat.], (*the sheriff has not sent the writ*). This continuance is abolished by r. 31, H. T. 1853.

Vice-Constable of England, an ancient officer in the time of Edward the Fourth.

Vice-Consul, one who acts for a consul; a sheriff. See CONSUL.

Vice-dominus, a sheriff.—*Ingulphus.*

Vice-dominus episcopi, the vicar-general or commisary of a bishop.—*Blount.*

Vice-gerent, a deputy or lieutenant.

Vice-marshal, an officer who was appointed to assist the Earl Marshal.

Vice-roy, the sovereign's lord-lieutenant over a kingdom, such as Ireland.

Vice-Treasurer. See UNDER-TREASURER.

Vicinage [fr. *voisinage*, Fr.], neighbourhood, or near dwelling; places adjoining. As to common because of vicinage, see 1 *Steph. Com.*

Vicini viciniora præsumuntur scire. 4 Inst. 173.—(Persons living in the neighbourhood are presumed to know the neighbourhood.)

Vicious intromission, a meddling with the movables of a deceased, without confirmation or probate of his will, or other title.—*Scotch phrase.*

Vicis et venellis mundandis, an ancient writ against the mayor or bailiff of a town, etc., for the clean sweeping of their streets and lanes.—*Reg. Orig.* 267.

Vicountiel, or **Vicontiel,** anything that belongs to the sheriffs, as *vicontiel writs*, i.e., such as are triable in the sheriff's court. As to vicontiel rents, see 3 & 4 Wm. IV. c. 99, ss. 12, 13, which places them under the management of the commissioners of the woods and forests.—*Cowel.*

Vicountiel jurisdiction, that jurisdiction which belongs to the officers of a county, as sheriffs, coroners, etc.

Victoria Colony. See 13 & 14 Vict. c. 59; 18 & 19 Vict. cc. 55, 56; and 22 & 23 Vict. c. 12.

Victoria Park. See 4 & 5 Vict. c. 27; 5 & 6 Vict. c. 20; 14 & 15 Vict. c. 46; 35 & 36 Vict. c. 53; and see PARK.

Victor Townley Act, 27 & 28 Vict. c. 29, amending 3 & 4 Vict. c. 54. This Act was passed (in consequence of the escape from justice of the notorious criminal whose name it has acquired) to require more strict proof of the condition of prisoners (especially those under sentence of death) who are supposed insane.

Victualling Houses. See PUBLIC-HOUSES.

Vidame, a vavasor, which see.

Videbis ea sæpe committi quæ sæpe vindicantur. 3 Inst. Epil.—(You will see those things frequently committed which are frequently punished.)

Vide, a word of reference; *vide ante*, or *vide supra*, refers to a previous passage; *vide post*, or *vide infra*, to a subsequent passage in a book.

Videlicet (*to wit*), a word used in pleading to precede the specification of particulars which need not be proved. See SCILICET.

Vidimus, an inspeximus, which see.—*Barr. on Stat.* 5.

Viduitatis professio, the making a solemn profession to live a sole and chaste woman.

Viduity, widowhood.

Vi et armis [Lat.] (*with force and arms*),

words formerly inserted in pleadings to characterise a trespass directed to be omitted by C. L. P. Act, 1852, s. 49.

View, an inspection of property in controversy, or of a place where a crime has been committed, by the jury previously to the trial.

A writ of view shall not be used, but, whether the view is to be had by a common or special jury, it shall suffice to obtain a rule of the court or judge's order directing a view; and the proceedings upon the rule for a view shall be the same as under a writ of view; and the sheriff, upon request, shall deliver to either party the names of the viewers, and return their names to the associate to be called as jurymen.—*C. L. P. Act*, 1852, s. 114. The rule for a view may be drawn up by the officer of the court on the application of the party without motion.—*H. T.* 1853, r. 48. Upon application for a view, there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited with the under-sheriff shall be 10*l.* in the case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles; and 15*l.* in the case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall be paid by such attorney to the under-sheriff (r. 49).

View of frankpledge. See LEET.

Vifgage, vivum vadium, which see.

Vigil, the eve or next day before any solemn feast.

Vigilantibus non dormientibus jura subveniunt. Wing. 692.—(Laws come to the assistance of the vigilant, not of the sleepy.)

Vi laicâ removendâ, a writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and holds out the other *vi et armis*; and he that is holden out shall have this writ addressed to the sheriff, that he remove the lay force; but the sheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force. —*F. N. B.* 54.

Vill, or **Village**, a manor; a parish; the out-part of a parish.—1 *Steph. Com.*

The following is the difference between a mansion, a village, and a manor, viz.: a mansion may be of one or more houses, but it must be of one dwelling-house, and none near to it, for if other houses are contiguous, it is a village; and a manor may consist of several villages, or one alone.—*Fleta*, l. 6, c. 51.

Villa est ex pluribus mansionibus vicinata et collata ex pluribus vicinis, et sub appellatione villarum continentur burgi et civitates. Co. Litt. 115.—(Vill is a neighbourhood of many mansions, a collection of many neighbours, and under the term of vills, boroughs and cities are contained.)

Villa regia, a manor held by the Crown.

Villain, or **Villein** [fr. *vilis*, Lat.], a man of base or servile condition; a bondman or servant; one who held by a base service.—1 *Hallam's Mid. Ages*, c. 2, pt. 2, p. 499; and 1 *Steph. Com.*

Villanis regis subtractis reducendis, a writ that lay for the bringing back of the king's bondmen that had been carried away by others out of his manors whereto they belonged.—*Reg. Orig.* 87.

Villein in gross, one annexed to the person of the lord, and transferable by deed from one owner to another.—1 *Steph. Com.*; 2 *Br. & Had. Com.*, 183.

Villein regardant, one annexed to the manor or land.—1 *Steph. Com.*

Villein services, base, but certain and determined services.—1 *Steph. Com.*

Villein socage, a holding of the king; a privileged sort of villenage.—1 *Steph. Com.*

Villenage, a base tenure.

There are two sorts:—1st, *pure*, where a man holds upon terms of doing whatsoever is commanded of him; and 2nd, *privileged*, otherwise called *villein socage*, which see. See also TENURE; 1 *Steph. Com.*

Villenous judgment [*villanum judicium*, Lat.], a judgment which deprived one of his *libera lex*, whereby he was discredited and disabled as a juror or witness; forfeited his goods and chattels, and lands for life; wasted the lands, razed the houses, rooted up the trees, and committed his body to prison. It has become obsolete.—4 *Bl. Com.* 136; 4 *Steph. Com.*; and 4 *Br. & Had. Com.* 153.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ; non ad sumendam vindictam, sed ad propulsandam injuriam. Co. Litt. 162. —(It is lawful to repel force by force, so as it be done with the moderation of blameless defence; not to take revenge, but to repel injury.)

Vinagium [*tributum à vino*, Lat.], a payment of a certain quantity of wine instead of rent for a vineyard.—2 *Mon. Angl.* 980.

Vinculo matrimonii, Divorce à. See A VINCULO MATRIMONII and DIVORCE.

Vindex, a defender.—*Civ. Law.*

Vindicatio, a real action claiming property for its owner.—*Civ. Law.*

Vindicatory parts of laws, the sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty.—1 *Steph. Com.*, and 1 *Br. & Had. Com.* 50, 51.

Vindictive damages, damages given on the principle of punishing the defendant, over and above compensating the plaintiff.

Viol [old law, Fr.], rape.—*Barr. on Stat.* 139.

Violation of safe conducts, an offence against the law of nations.—4 *Steph. Com.*

Violation of women. See RAPE.

Violence. See THREATS.

Violenta præsumptio aliquando est plena probatio. Co. Litt. 6 b.—(Violent presumption is sometimes full proof.)

Violent profits. Mesne profits in Scotland. 'They are so called because due on the tenant's forcible or unwarrantable detaining the possession after he ought to have removed.'—*Erskine* 2, 6, 54; and *Bell's Scotch Law Dict.*

Viperina est expositio quæ corrodit viscera textûs. 11 Co. 34.—(It is a poisonous exposition which destroys the vitals of the text.)

Vir et uxor censentur in lege una persona. Jenk. Cent. 27.—(Husband and wife are considered one person in law.)

Vir et uxor sunt quasi unica persona, etc. Co. Litt. 112.—(Man and wife are, as itwere, one person, etc.) See HUSBAND AND WIFE.

Virga, a rod or ensign of office.—*Cowel.*

Virgate, a yard-land.

Virge, Tenant by, a species of copyholder who holds by the verge or rod.

Virgo intacta, a pure virgin.

Vir militans Deo non implicetur secularibus negotiis. Co. Litt. 70.—(A man fighting for God must not be involved in secular business).

Viridario eligendo, a writ for the choice of a verderor in the forest.—*Reg. Orig.* 177.

Virilia, the privy members of a man, to cut off which was felony by the Common Law, though the party consented to it.—*Bract.* l. 3, 144; *Cowel.*

Virtute cujus. This was the clause in a pleading justifying an entry upon land, by which the party alleged that it was in virtue of an order from one entitled that he entered.

Vis [Lat.], any kind of force, violence, or disturbance to person or property. It was a *vis armata*, i.e., *vis cum armis*, or *vis simplex*, i.e., *vis sine armis.*—1 *Reeves*, c. 6, p. 322.

Visa, a register; the authentication of a passport by a foreign authority.

Viscount, or **Vicount** [fr. *vicecomes*, Lat.], an arbitrary title of honour, without any office pertaining to it, created by Henry VI. —2 *Inst.* 5. See *Barr. on Stat.* 409. A peer of the fourth order, between earl and baron. —2 *Steph. Com.*

Visitation, judicial visit or perambulation; the periodical visit of a bishop or archdeacon to his clergy at the principal church of the diocese or archdeaconry, when he delivers a hortatory address called a charge.

Visitation books of heralds, compilations, when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, to register marriages and descents, which were verified to the heralds upon oath; they are allowed to be good evidence of pedigree.—3 *Steph. Com.*

Visitor, an inspector of a college or corporation or hospital. The Court of Chancery has exercised the right of visitation on behalf of the Crown. As to visitors of lunatic asylums, see *Lunacy Act*, 1890. Any jurisdiction exercised by the Lord Chancellor in right or on behalf of Her Majesty as visitor of any college, or of any charitable or other foundation, is not transferred to the High Court of Justice (Jud. Act, 1873, s. 17). See also title IDIOTS AND LUNATICS.

Visitor of manners, the regarder's office in the forest.—*Manw.*, i. 195.

Vis legibus est inimica. 3 Inst. 176.—(Violence is inimical to the laws.)

Vis major, inevitable accident, irresistible force. See ACT OF GOD.

Visne [*visnetum*, Lat.], a neighbourhood. —*Cowel.*

Visus, view or inspection.—*Cowel.*

Vitilitigate, to litigate cavillously.

Vitium clerici nocere non debet. Jenk. Cent. 23.—(A clerical error ought not to hurt.)

Vitium est quod fugi debet, nisi rationem non invenias, mox legem sine ratione esse clames. Elles. Postn. 86.—(It is a fault which ought to be avoided, that if you cannot discover the reason, you should presently exclaim that the law is without reason.)

Viva pecunia [Lat.], cattle which obtained this name from being received during the Saxon period as money upon most occasions, at certain regulated prices.—*Cowel.*

Vivary or **Vivarye** [fr. *vivarium*, Lat.], a place where animals are preserved; a park, warren, piscary, etc.—2 *Inst.* 100; *Cowel.*

Vivâ voce (*by word of mouth*).

Viver, or **Vivier**, a fish-pond.—2 *Inst.* 199.

Vivisection, the dissecting of animals alive, for the purpose of scientific experiments, may only be practised by persons holding a license from a Secretary of State, and subject to the restrictions imposed by the 'Cruelty to Animals Act, 1876,' 39 & 40 Vict. c. 77.

Vivum vadium Vifgage, or **Living Pledge**, when a person borrows money of another, and grants to him an estate to hold till the

rents and profits shall repay the sum borrowed with interest. The estate is conditioned to be void as soon as the sum is realised. See WELSH MORTGAGE, and 2 *Br. & Had. Com.* 299.

Vix ulla lex fieri potest quæ omnibus commoda sit sed si majori parti prospiciat utilis est. Plow. 369.—(Scarcely any law can be made which is beneficial to all; but it is useful if it benefit the greater majority.)

Vocabulum artis, a word of art.

Vocatio in jus, a citation to law.—*Civil Law.*

Vociferatio, an outcry; hue and cry, *q.v.*

Void and **Voidable**. There is this difference between these two words: *void* means that an instrument or transaction is so nugatory and ineffectual that nothing can cure it; *voidable*, when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease.

The Court of Chancery has drawn this distinction between voidable and void contracts: with regard to the former, they will be decreed to be delivered up, since their retention is liable to be employed to improper purposes, such as future litigation, when lapse of time may have weakened or destroyed the means of defence; or since their existence uncancelled may cloud a title, or diminish its value and security; but as to void instruments, the illegality of which appears upon their face, equity does not interpose its authority, since their production at any period of time will plainly establish their nullity. Of *marriages*, those which are defective by reason of want of form in the celebration are void, *ab initio*, and may be declared void at any time before or after the death of the parties. So are marriages in which one party is insane. Marriages defective from immaturity of age are voidable by merely failing to ratify them by cohabitation when the parties come to the age. Marriages defective by reason of impotency are voidable only, must be impeached in the lifetime of the parties, and can be impeached only by the person not impotent. Consult 1 *Steph. Com.*; and 2 *Br. & Had. Com.*, 469, 471, 507.

Voidance, the act of emptying; ejection from a benefice.

Voir dire [*veritatem dicere*, Lat.], examining a witness before he gives evidence in the cause, as to whether he be competent in respect of religious belief, etc., or not. (See *Maden* v. *Catanach*, 31 *L. J. Ex.* 118.) Lord Kenyon said that objections to the competency of witnesses never come too late, but may be made at any stage of the cause. (*Stone* v. *Blackburne*, 1 *Esp.* 37). In *Reg.* v. *Moore and Brooks*, the court of Criminal Appeal, in January 1892, quashed the conviction of the prisoners on the ground that a native of India had affirmed under the Oaths Act, whereas he ought to have been sworn; and see *Oaths.*

Voiture, carriage, transportation by carriage.

Volenti non fit injuria. Plow. 501.—(Where the sufferer is willing no injury is done.)

Volumus (*we will*), the first word of a clause in the royal writs of protection and letters-patent.

Voluntary, acting without compulsion; doing by design. When applied to a conveyance, it means that it is made merely on a *good*, and not on a *valuable* consideration. See FRAUDULENT CONVEYANCES.

Voluntary answer, one which was filed by a defendant to a bill in equity, without being called upon to answer by the plaintiff.

Voluntary deposit, such as arises from the mere consent and agreement of the parties. —*Story on Bailments*, 47.

Voluntary jurisdiction, one exercised in matters admitting of no opposition or question, and therefore cognizable by any judge and in any place, and on any lawful day.—*Bell's Scotch Law Dict.*

Voluntary oath, an oath administered in a case for which the law has not provided. See 5 & 6 Wm. IV. c. 62; 4 *Br. & Had. Com.* 154; 4 *Steph. Com.* See OATH.

Voluntary waste, that which is the result of the voluntary act of the tenant of property, as where he pulls down a wall, or cuts timber; opposed to permissive waste. See WASTE.

Voluntas donatoris in chartâ doni sui manifeste expressa observetur. Co. Litt. 21.—(The will of the donor manifestly expressed in his deed of gift is to be observed.)

Voluntas facit quod in testamento scriptum valeat. D. 30, 1, 12, s. 3.—(It is intention which gives effect to the wording of a will.)

Voluntas in delictis, non exitus spectatur. 2 Inst. 57.—(In crimes the will, and not the consequence, is looked to).

Voluntas reputatur pro facto. 3 Inst. 69. —(The intention is to be taken for the deed.)

Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum. 4 Co. 61.—(The will of a testator is ambulatory until the latest moment of life.)

Voluntas testatoris habet interpretationem latam et benignam. Jenk. Cent. 260.—(The intention of a testator has a broad and benignant interpretation.)

Voluntas ultima testatoris, est perimplenda secundum veram intentionem suam. Co. Litt.

322.—(The last will of the testator is to be fulfilled according to his true intention.)

Voluntarius dæmon, a drunkard.—*Co. Litt.* 247 *a.*

Volunteer, a person who receives a voluntary conveyance.

Also, a person who has voluntarily joined a corps raised either for home or foreign service; or for the purpose of being trained to act with the regular troops and the militia and yeomanry in defending the country in the event of invasion. The name of the Volunteer force is now generally applied to the body raised for the latter purpose in Great Britain. The laws relating to the Volunteer force in Great Britain have been consolidated and amended by the Volunteer Act, 1863 (26 & 27 Vict. c. 65), which repealed the statutes on the subject previously in force.

Vote, suffrage, voice given. See title BALLOT.

Voter, one who has the right of giving his voice or suffrage.

Voting Papers. The Act 24 & 25 Vict. c. 63, provided that votes at parliamentary elections for the universities may be recorded by means of voting papers. See also 31 & 32 Vict. c. 65. These provisions have been extended to the Scotch universities by 31 & 32 Vict. c. 48, s. 39.—2 *Steph. Com.*

Votum, a vow or promise. *Dies votorum,* the wedding-day.—*Fleta,* l. 4.

Vouch, to give testimony, to obtest, to answer for.

Vouche [fr. *vooo,* Lat.], to call one to warrant lands.

Vouchee, the person vouched in a writ of right.

Voucher, a witness, testimony; 2, acquittance, or receipt.

Vraic, seaweed. It is used in great quantities by the inhabitants of Jersey and Guernsey for manure, and also for fuel by the poorer classes. In *Benest* v. *Pipon,* on appeal from Jersey to the Privy Council, it was ruled that the lord of a manor cannot establish a claim to the exclusive right of cutting seaweed on rocks situate below low-water mark, except by a grant from the Crown, or by such long and undisturbed enjoyment of it as to give him a title by prescription.—1 *Knapp's P. C. Rep.* 60, A.D. 1829.

Vulgaris opinio est duplex, viz., *orta inter graves et discretos, quæ multum veritatis habet, et opinio orta inter leves et vulgares homines absque specie veritatis.* 4 Co. 107.—(Common opinion is of two kinds, viz., that which arises among grave and discreet men, which has much truth in it, and that which arises among light and common men, without any appearance of truth.)

Vulgaris purgatio, *Judicium Dei,* which see.

W.

Wadset, corresponds in Scotland to mortgage in England. The lender is called the wadsetter, and the borrower the reverser. —*Bell's Scotch Law Dict.*

Waftors, conductors of vessels at sea.—*Cowel.*

Wage [fr. *vador,* Lat.; *gage,* Fr.], the giving of a security for the performance of anything.

Wager, a contract by A. to pay money to B. on the happening of a given event, in consideration of B. paying money to him on the event not happening.

At Common Law, a wager was a legal contract, which the Courts were bound to enforce, so long as it was not against morality, decency, or sound policy.—*Johnson* v. *Lumley,* 12 C. B. 468. But by 8 & 9 Vict. c. 109, ss. 17—19, wagers are irrecoverable at law. They are not, however, made illegal, so that money paid by an agent in discharge of lost bets may be recovered by the agent from his principal, although money paid to a stakeholder may be recovered by the loser if he countermand the authority to pay before the stakes are paid to the winner.—*Hampden* v. *Walsh,* 1 *Q. B. D.* 189.

In *Read* v. *Anderson,* 13 *Q. B. D.,* 779 it was held by a majority of the Court of Appeal that a turf commission-agent might recover the amount of lost bets paid by him, in defiance of a revocation of the authority to make them; but the correctness of this decision has been questioned.

Wager of battel. See BATTEL.

Wager of law [fr. *vadatio legis,* Lat.], a proceeding which consisted in a defendant's discharging himself from the claim on his own oath, bringing with him at the same time into court eleven of his neighbours (*compurgatores*) to swear that they believed his denial to be true. It was abolished after long disuse (see, however, a revival of it in 1824 in *King* v. *Williams,* 2 *B. & C.* 638) by 3 & 4 Wm. IV. c. 42, s. 13.

Wagering policies, those effected for gambling purposes, which are void by 14 Geo. III. c. 48. See 19 Geo. III. c. 37. See DOUBLE INSURANCE.

Wages, the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him.

An infant can recover wages under 50*l.* in the County Court, without a next friend.—9 & 10 *Vict.* c. 95, s. 64.

Wages of any 'servant, labourer, or workman' cannot be 'attached' to satisfy judgments.—*Wages Attachment Abolition Act*, 1870, 33 & 34 *Vict.* c. 30.

As to the requirements before a warrant of arrest can be issued in an action in the Admiralty branch of the High Court of Justice, for wages, see Jud. Act, 1875, Ord. V., r. 11, as amended by r. 3 of the Rules of Court of December, 1875. See also title MASTER AND SERVANT.

Wageesum, a doubtful word, perhaps Mussel Ouze. See *Re Alston's estate*, 5 *W. R.* 189.

Waggonage, money paid for carriage in a waggon.

Waif or **Waift**, **Weif** or **Weft** [*waiviatum*, low Lat.], goods found but claimed by nobody; that of which every one waives the claim. 2. Goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. These are given to the sovereign by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—*Cro. Eliz.* 694.

Wainable, land that may be ploughed, manured, or tilled.—*Chart. Antiq.*

Wainagium, or **Wonogium**, the *countenance* of a villein; that which is necessary for the cultivation of land.—*Barr. on Stat.* 12; 4 *Steph. Com.* See CONTENEMENT.

Wain-bote, timber for waggons or carts.

Waiting-clerks in Chancery. Their offices were abolished by 5 & 6 Vict. c. 103.

Waive, to forego, decline to take advantage of; to put a woman out of the protection of the law. See OUTLAWRY.

Waiver, the passing by of an occasion to enforce a legal right whereby the right to enforce the same is lost; a common instance of this is where a landlord waives a forfeiture of a lease by receiving rent, or distraining for rent, which has accrued due after the breach of covenant causing the forfeiture became known to him. See *Davenport* v. *The Queen*, 3 *App. Cas.* 115. Mere lying by is no waiver for this purpose; there must be some positive act on the part of the landlord, which act, however, if done, is a waiver in law, notwithstanding any protest. 2. Declining to take advantage of irregularities in proceedings. Consult *Bullen and Leake on Plead.*

Wakeman [*quasi*, watchman], the chief magistrate of Ripon, in Yorkshire.—*Camden.*

Wakening, a citation narrating that a complainer has raised a summons which he had let sleep for a year and a day, concluding that all persons cited on the first should compare, hear, and see the aforesaid action called, awakened, and debated, till sentence be given. —*Bell's Scotch Law Dict.*

Wales. After Edward I. conquered Wales, the line of their ancient princes was abolished, and the King of England's eldest son was created their titular prince, and the territory of Wales was then entirely annexed to the British Crown. The 27 Hen. VIII. c. 26, confirmed by 34 & 35 Hen. VIII. c. 36, gave the utmost advancement to their civil prosperity, by admitting them to a thorough communion of laws with the subjects of England. By 20 Geo. II. c. 42, it is declared that where England only is mentioned in any Act of Parliament, it shall be deemed to comprehend the dominion of Wales and town of Berwick-upon-Tweed. By 1 Wm. IV. c. 70, the jurisdiction of the court of Great Sessions (see SESSIONS, GREAT, OF WALES) was abolished, and assizes are now held there as in England. By 8 & 9 Vict. c. 11, the manner of assigning sheriffs in Wales is regulated by and assimilated to that of England. The 26 & 27 Vict. c. 82 empowers the bishops of Welsh dioceses to facilitate the making provision for English services in certain parishes in Wales.

Wales, Prince and Princess of. See PRINCE AND PRINCESS.

Wales, Statute of, 12 Edw. I., A.D. 1284. —2 *Reeves*, c. ix., 95.

Waleschery, the being a Welshman.—*Spelm.*

Waliscus [*servus*, Lat.], a servant, or any other ministerial officer.—*Leg. Jud.*, c. 34.

Walkers, foresters who have the care of a certain space of ground assigned to them. —*Cowel.*

Waltham Black Act, 9 Geo. I. c. 22. As to setting fire to houses, mills, etc., see BLACK ACT.

Waltham Forest. See 12 & 13 Vict. c. 81, and see EPPING FOREST.

Wanlass, an ancient customary tenure of lands, i.e., to drive deer to a stand that the lord may have a shot.—*Blount's Tenures*, 140.

Wapentake, or **Wapentachium**, synonymous with 'hundred' in Yorkshire, Lincolnshire, Nottinghamshire, Derbyshire, Rutland, and Leicestershire; the term is said to be derived from recognition of the local magistrate by touching his arms, but this is very questionable, though it unquestionably has reference to armed gatherings of the freemen.—*Stubbs's Constitutional History*, vol. i., p. 96.

War. The sovereign has the sole prerogative of making war or peace.

War, Articles of, see ARMY.

War, levying against the Sovereign, a species of treason. See TREASON.

Ward, a child under guardianship. A *ward of court* is an infant under the protection of the Court of Chancery. See INFANT.

Also, a division of the larger municipal boroughs for the purpose of election of councillors, or of a parish for the purpose of election. of guardians. The numbers of Borough Wards (if any) and of Councillors for each, are fixed by the schedules to the Municipal Corporations Act, 1835, or by charter granted after that Act, or Order in Council altering them, but the number of councillors in each ward is always divisible by three. Where a borough has wards, the burgess roll is made up in separate rolls called ward rolls, and a burgess may not be enrolled in more than one ward roll.—*Municipal Corporations Act*, 1882, 45 & 46 *Vict.* c. 50, s. 45. There is a separate election of councillors for each ward (*Ib.*, s. 50), and no person may subscribe a nomination paper for more than one ward, or vote in more than one ward (*Ib.*, s. 51). Also see WATCH AND WARD.

Warda, the custody of a town or castle; which the inhabitants were bound to keep at their own charge.—*Mon. Angl.* i. 372.

Wardage, money paid and contributed to watch and ward.—*Domesday.*

Warden, guardian or keeper. The Lord Warden of the Cinque Ports is prohibited from recommending members of Parliament to those places by 2 W. & M. sess. 1, c. 7. As to wardens of the Society of Apothecaries, see 55 Geo. III. c. 194; 3 *Steph. Com.*

Ward-holding, the ancient military tenure in Scotland. Abolished by 20 Geo. II. c. 50.

Wardmote, a court held in every ward in London.

The wardmote inquest has power to inquire into and present all defaults concerning the watch and police doing their duty, to see that engines, etc., are provided against fire, that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, etc., that they sell in lawful measures; searches are to be made for beggars, vagrants, and idle persons, etc., who shall be punished.

Ward-penny, wardage, which see.

Wards and Liveries, Court of, a court erected by Hen. III. and abolished by 12 Car. II. c. 24.

Wardship, pupilage, guardianship; and incident to tenure in socage. See TENURE.

Wardship in chivalry, an incident to the tenure of knight-service. See *Ibid.*

Wardship in copyholds, the lord is guardian of his infant-tenant by special custom.

Wardship of infants. The wardship of infants and the care of infants' estates is assigned to the Chancery Division of the High Court of Justice (Jud. Act. 1873, s. 34). See INFANT.

Wardstaff, a watchman's staff.—*Cowel.*

Wardwrit, the being quit of giving money for the keeping of wards.—*Spelm.*

Warectare, to plough up land designed for wheat in the spring, in order to let it lie fallow for better improvement, which in Kent is called summer-land.

Warectum, otherwise called wareccum or varectum, 'doth signify fallow.'—*Co. Litt.* 5 b.

Warehousing system, the allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn for home consumption, without payment of such duties until they are so removed, or a purchaser found for them.—2 *Steph. Com.*

Wargus, a banished rogue.—*Leg. Hen. I.* c. 83.

Waring, Ex parte, Rule of. The principle established in *Ex parte Waring*, 19 *Ves.* 345, that securities held by a banker against his acceptances are available to the bill holders if both acceptor and drawer are insolvent.

Warnciatura, garniture, furniture, provision, etc.—*Cowel.*

Warning of a caveat, a notice to a person who has entered a caveat in the Probate branch of the High Court to appear and set forth his interest. Consult *Coote on Probate.*

Warnoth, an ancient custom, that if any tenant holding of the castle of Dover failed in paying his rent at the day, he should forfeit double, and for his second failure treble; and the lands so held are called *terræ cultæ et terræ de warnoth.*—*Mon. Angl.*, ii. 589.

War Office, a department of State from which the sovereign issues orders to his forces. This department was formerly united with the Colonial Office, but an additional secretary of state was appointed, for affairs of war solely, in the year 1854. See HORSE GUARDS; and the War Office Act, 1870, 33 & 34 Vict. c. 17.

Warping. A mode of fertilising land by the 'warp' or deposit of flooded or tidal rivers artificially let in over the land and let off from it. Warping is an improvement within the Agricultural Holdings Act for which compensation is payable if executed with the consent of the landlord, and an improvement upon which a tenant for life may expend the proceeds of the sale of the

settled land under the Settled Land Act. See AGRICULTURAL HOLDINGS and SETTLED LAND.

Warrandice, warranty.—*Scotch Term.*

Warrant, a precept under hand and seal to some officer to arrest an offender, to be dealt with according to due course of law; also, a writ conferring some right or authority, a citation or summons.

Warrant of Attorney, a written authority addressed to an attorney of the court in which it is intended that a judgment shall be entered up, authorising him to appear and receive a statement for him in an action brought or to be brought against him, at the suit of a person named, and to confess the same, or suffer judgment to pass by default; it also authorises him to execute a release of errors touching the judgment. The instrument must then be under seal, which is not necessary where it merely authorises a judgment to be confessed. A release of errors must be by deed, and an agent to execute a deed must be appointed by deed. A warrant of attorney may be executed as a security for the performance of any agreement between the parties; but it does not extinguish an original debt, or affect the right to sue upon it, unless judgment has been signed, for until this is done it is merely a collateral security. If an infant, or *feme covert*, or other incapacitated person, execute a warrant of attorney jointly with others, it can only be set aside as against the incapacitated person. It is usual to make the warrant subject to be defeated on the performance of certain conditions, and when this is the case, they are set forth in an agreement, hence called the defeasance.

By 32 & 33 Vict. c. 62, s. 24, it is provided that 'a warrant of attorney to confess judgment in any personal action on *cognovit actionem* given by any person, shall not be of any force unless there is present some attorney of one of the superior courts on behalf of such person, expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name to the due execution thereof, and thereby declare himself to be attorney for the person executing the same and state that he subscribes as such attorney'; and by s. 25, it is provided that a warrant of attorney to confess judgment or *cognovit actionem* not executed in manner aforesaid, shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, and was duly informed of the same. These provisions come in place of those continued in the 1 & 2 Vict. c. 110, ss. 9, 10, which are repealed by 32 & 33 Vict. c. 83. The 32 & 33 Vict. c. 62, also contains various provisions in regard to the filing of warrants of attorney, cognovits, and judges' orders.

The death of either party generally revokes the warrant, but the Court may order judgment to be entered up after the death of the plaintiff by his representatives, if the warrant authorise it. If one or more of several plaintiffs die, judgment may be signed by the survivors. But the warrant cannot authorise signing judgment against the defendant's executors, for the warrant then stands revoked. If one of several joint defendants die, the warrant is wholly revoked; but if they be joint and several, judgment may be signed against the survivors. If a *feme sole* give a warrant of attorney, and afterwards marry, the Court will allow the judgment against husband and wife. If a warrant of attorney be given to a *feme sole*, and she marry, the judgment will be allowed to be entered by husband and wife; but a warrant to a *feme covert* is utterly void. If the warrant of attorney be obtained by fraud, duress, or misrepresentation, or upon illegal consideration, the Court will order it to be delivered up to be cancelled, and will set aside all proceedings upon it, and so if a material alteration be made in it. If the warrant is good in part and bad in part, the Court will sustain it *quoad* the good part. If the fact of the consideration be doubtful, the Court may direct an issue to try it.

Warrantee, a person to whom a warranty is made.

Warrantia chartæ, a writ where one was enfeoffed of lands with warranty, and then he was sued or impleaded in assize or other action in which he could not vouch or call to warranty.—*F. N. B.* 134. Abolished by 3 & 4 Wm. IV. c. 27.

Warrantia diei, an ancient writ, where one having a day assigned personally to appear in court to any action, is in the meantime employed in the royal service, so that he cannot come on the day appointed; it was addressed to the justices to this end, that they neither take nor record him in default for that time.—*F. N. B.* 17.

Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisinâ suâ; et tenens de re warranti excambium habebit ad valentiam. Co. Litt. 365.—(To warrant is to defend and insure in peace the tenant, who calls for warranty, in his seisin; and the tenant in warranty will have an exchange in proportion to its value.)

Warranty of lands is abolished.—3 & 4 *Wm. IV.* cc. 27, 74.

Warrantor, a person who warrants; the heir of one's husband.

Warrantor potest excipere quod quærens non tenet terram de quâ petit warrantiam, et quod donum fuit insufficiens. Hob. 21.—(A warrantor may object that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient).

Warranty, a guarantee or security; also a promise or covenant by deed by the bargainer, for himself and his heirs, to warrant and secure the bargainee and his heirs against all persons for the enjoying of the thing granted. —3 *Br. & Had. Com.* 174—176.

Warranty of lands is altogether superseded in practice by 3 & 4 Wm. IV. cc. 27, 74.

The general rule of law applicable to all sales of goods is that the buyer buys at his own risk; *caveat emptor*; unless the vendor give an express warranty, or unless the law imply a warranty from the nature of the thing sold, and the circumstances of the sale; or unless the vendor have been guilty of a fraudulent representation or concealment in regard to the thing sold.

Express Warranty.—Every affirmation made by the vendor at the time of the sale in relation to the goods, amounts to a warranty, provided it be so intended. Where an express warranty is couched in technical terms, it is to be interpreted according to their technical signification, unless they be manifestly used in a different sense, and differently understood by the buyer. A general warranty does not extend to patent defects which are apparent upon due inspection, or to defects which are at the time known to the buyer.

Implied Warranty.—A warranty is implied in five cases:—(1) A warranty of title will be presumed when the goods sold are, at the time of the sale, in the possession of the vendor or of a third person, unless the contrary be then expressed; (2) when an examination of goods is, from their nature or situation at the time of the sale, impracticable, a warranty will be implied that they are merchantable; (3) upon an executory contract of sale, where goods are to be manufactured, or to be procured for a particular use or purpose, a warranty will be implied that they are reasonably fit for such purpose or use, as far as goods of such a kind can be; (4) a warranty will be implied against all latent defects in two cases: 1st, when the seller knew that the buyer did not rely on his own judgment, but on that of the seller, who knew at the time, or might have known, the existence of the defects; 2nd, where from the situation of the parties (as in the case of a manufacturer or producer), the seller might have provided against the existence of defects; or where a warranty may be presumed from the very nature of the transaction; (5) where goods are sold by sample, a warranty is implied that the bulk corresponds to the sample in nature and quality.—*Consult Story's Contracts*, 329; and *Addison on Contracts.*

Warren [fr. *waerande*, Dut.; *guerenne*, Fr.], a franchise or place privileged by prescription or grant from the Crown, for the keeping of beasts or fowls of warren.—1 *Inst.* 233. See *Earl Beauchamp* v. *Winn*, *L. R.* 6 *H. L.* 238; and *Robinson* v. *Duleep Singh*, 11 *Ch. D.* 798.

Warscott, a contribution usually made towards armour in the time of the Saxons.

Warth, a customary payment for castle guard.—*Cowel.*

Wash, a shallow part of a river or arm of the sea.

Washhouses, Public. See PUBLIC BATHS.

Washing-horn [fr. *corner l'eau*, Fr.], the sounding of a horn for washing before dinner. The custom was formerly observed in the Temple.

Washington, Treaty of. A treaty signed on May 8th, 1871, between the Queen and the United States of America, with reference to certain differences arising out of the war between the Northern and Southern States of the Union, the Canadian Fisheries, and other matters. See 35 & 36 Vict. c. 45.

Waste [fr. *vastum*, Lat.], any spoil or destruction in houses, gardens, trees, etc., by a tenant, to the prejudice of the expectant in fee. It is either (1) legal, subdivided into (*a*) *voluntary* or *commissive*, as where the tenant pulls down a house or a part thereof, or ploughs up ancient meadow, and (*b*) *permissive* or *omissive*, as where a tenant suffers a house to fall out of repair; and (2) *equitable*, which comprehends acts not deemed waste at the Common Law. Both for voluntary and permissive waste an action lies against a tenant, whether for life or years, by virtue of the Statute of Gloucester, 6 Edw. I. c. 5. A tenant from year to year is liable for voluntary waste only. An injunction will be granted to restrain voluntary waste, as by ploughing up ancient meadow. See *Woodfall L. & T.*, 14th ed., c. 16, s. 5. A mortgagor in possession will be restrained from cutting down timber, for as the whole estate is the security for the money advanced, the mortgagor ought not to be suffered to diminish it; but he may cut underwood of a proper growth at seasonable times. Trustees to preserve contingent remainders must enjoin a tenant for life from waste to the prejudice of the *cestui que trust* in remainder.

Equitable waste (which is voluntary only)

is an unconscientious abuse of the privilege of non-impeachability for waste at Common Law, whereby a tenant for life, without impeachment of waste, will be restrained from committing wilful, destructive, malicious, or extravagant waste, such as pulling down houses, cutting timber of too young a growth, or trees planted for ornament, or for shelter of premises; for, though in some cases *fortior est dispositio legis quam hominis*, yet that shall not extend to encumber or spoil estates.—*Vane* v. *Lord Barnard*, 2 *Vern.* 738 (1716); *Baker* v. *Sebright*, 13 *Ch. D.* 179.

By the Judicature Act, 1873, s. 25 (3), it is provided that an estate for life, without impeachment of waste, shall not confer upon the tenant for life any legal right to commit waste of the kind known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument vesting such estate.

Wastors, thieves.—*Cowel.*

Watch, the, a body of constables on duty on any particular night.

Watch, and **Ward**. Ward [*custodia*, Lat.] is chiefly applied to the daytime, in order to apprehend rioters and robbers on the highways. Watch [fr. *watcht*, or *wacta*, Teut.] is applicable to the night only, and begins at the time when ward ends.—1 *Bl. Com.* 356.

Watch Committee, a committee of the town council of a municipal borough, not exceeding one-third of the council in number, having the appointment and control of the borough constables.—*Municipal Corporations Act*, 1882, 45 & 46 *Vict.* c. 50, ss. 5, 190, 191. Prior to this Act, it was a common custom for a town council to constitute the whole of their number the watch committee.

Watching and Lighting. See 3 & 4 Wm. IV. c. 90, and the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 163.

Watch Rate, a rate leviable in many municipal boroughs by order of the council. It is carried to the borough fund, and must not exceed 8*d.* in the pound.—*Municipal Corporations Act*, 1882, 45 & 46 *Vict.* c. 50, ss. 197—200.

Water. In the language of the law the term land includes water.—2 *Bl. Com.* 18. An action cannot be brought to recover possession of a pool or other piece of water by the name of water only, but it must be brought for the land that lies at the bottom, e.g., 'twenty acres of land covered with water.'—*Brownl.* 142. See POOL. By granting a certain water, though the right of fishing passes, yet the soil does not. Water being a movable, wandering thing, there can only be a temporary, transient usufructuary property therein. Consult *Gale on Easements and Angell on Watercourses.* 'Water' does not include the land on which it stands, unless perhaps in the case of salt pits or springs, where the interest of each owner is measured by ballaries or buckets of brine.—*Burt. Comp.* pl. (550). As to the supply of water to their districts by local authorities, see the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 51—68, and as to obligation of owners of houses to provide water supply, see Public Health (Water) Act, 1878, 40 & 41 Vict. c. 25. See WATERWORKS.

Water and Gas Works Facilities Act, 1870, 33 & 34 Vict. c. 70 (amended by 36 & 37 Vict. c. 89).

Water-bailiff, an officer in port-towns, whose duty is to search ships; also an officer appointed under the Salmon Fishery Acts to enforce the provisions of those Acts by searching for illegal engines, etc. See 24 & 25 Vict. c. 109, s. 34; 28 & 29 Vict. c. 121, s. 27 (appointment); 36 & 37 Vict. c. 71, s. 36 (general powers).

Watercourse, a species of incorporeal hereditament, being a right which a man has to the benefit of the flow of a river or stream, such right commonly referring to a stream passing through a man's own land, and the banks of which belong either to himself on both sides, or to himself on one side, and to his neighbour on the other, in which latter case (unless the stream be navigable, for then the bed of it, so far at least as the tide of the sea flows, presumably belongs to the Crown) the proprietor of each bank is considered as *primâ facie* the proprietor also of half the land covered by the stream, i.e., *usque ad medium filum aquæ.*

A prescriptive *primâ facie* right to watercourses and ways is gained by twenty years' uninterrupted enjoyment, and an indefeasible right after forty years; and when the land over which such rights as these are claimed has been held for term of life, or a term exceeding three years, such term shall be excluded from the computation of the forty years, in the event of the person who may be entitled in reversion resisting the claim within three years after the term determines.—2 & 3 *Wm. IV.* c. 71. See *Gale on Easements*, and *Angell on Watercourses.*

Water-gage, a sea-wall or bank to restrain the current and overflowing of the water; also an instrument to measure water.—*Cowel.*

Water-gang, a trench or course to carry a stream of water.—*Cowel.*

Water-gavil, a rent paid for fishing in, or other benefit received from, some river.—*Cowel.*

Water-measure, a greater measure than the

Winchester, formerly used for selling coals in the pool, etc.—22 *Car. II.* c. 11.

Watermen. See THAMES WATERMEN.

Water-Ordeal. See COLD-WATER-ORDEAL, and HOT-WATER-ORDEAL.

Waterscape, an aqueduct or passage for water.

Water-supply to Metropolis. See 15 & 16 Vict. c. 84; and 34 & 35 Vict. c. 113.

Waterworks Clauses Acts, 1847 and 1863, 10 & 11 Vict. c. 17; 26 & 27 Vict. c. 93. By the Gas and Waterworks Facilities Act, 1870 (33 & 34 Vict. c. 70, amended by 36 & 37 Vict. c. 89), provision is made whereby such undertakings may be sanctioned by Provisional Orders.

Waveson, goods swimming upon the waves after a shipwreck.—*Cowel.*

Wax scot [fr. *cerarium*, Lat.], duty anciently paid twice a year towards the charge of wax candles in churches.—*Spelm.*

Way [fr. *wæg*, Sax.; *weigh*, Dut.; *vig* or *wig*, M. Goth.], road made for passengers.

There are three kinds of ways:—1st, a footway (*itér*); 2nd, a pack and prime way, which is both a horse and footway (*actus*); 3rd, a cart way (*via* or *aditus*), which is called *via regia* if it be common to all men; and *communis strata* if it belong to only some town or private person.—*Co. Litt.* 56 *a.*

All ways are divided into highways and private ways. A right of way strictly means a private way, i.e., a privilege which an individual or a particular description of persons may have of going over another's ground. Such a right is an incorporeal hereditament.

A highway is a public passage for the Sovereign and all her subjects, and it is commonly called the Queen's public highway. Besides the ordinary highways, turnpike roads have been created, and regulated by specific Acts of Parliament. See TURNPIKE-ROADS. Highways generally become so by what is called a dedication of them to the public by the owner of the soil, but the public may also acquire the use of a highway by Act of Parliament.

As highways are for public service, if they are so out of repair that the usual track is impassable, people may pass, by going out of the track, upon the land of the owners of the adjoining closes; but this privilege is confined to highways; for as private ways are presumed to have originated in grants from the owner of the soil, the want of repair, amounting to a founderous state, does not authorise passengers to go out of the way upon the adjacent land.

The inhabitants of a parish are *primâ facie* bound to repair a highway of common right; unless by prescription they can throw the burden on particular persons by reason of their tenure; and if the inhabitants of a township, bound by prescription to repair, be expressly exempted by an Act of Parliament from repairing the roads to be made within the township, it falls on the rest of the parish.

By the General Highway Act, 5 & 6 Wm. IV. c. 50, power is given to stop up and divert highways, and the mode of proceeding to effect this object is pointed out. Parties grieved have a right of appeal to the sessions.

Bridges are public highways. See BRIDGE.

A navigable river is esteemed to be a highway; and if the water, which is the highway, change its course and flow upon the land of another, the highway extends over the place where the water newly flows in like manner as it existed over the ancient course, so that the owner may not disturb it. With respect to navigable rivers there is this difference, however, between them and highways, that the right to the soil of a navigable river is not, by presumption of law, in the owners of the adjoining lands.

Ferries may be said to be common highways, as they are a common passage over rivers. They differ, however, in some measure, as they are the private property of individuals, who may maintain an action for the disturbance of their rights.

A private right of way may be claimed by prescription and immemorial usage; thus, where the inhabitants of a particular hamlet, or the owners or occupiers of a particular close or farm, have immemorially been used to cross a particular piece of land, a right of way is created by the immemorial usage, which supposes a grant. By 2 & 3 Wm. IV. c. 71, s. 2, it is enacted, that no claim by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water which has been enjoyed twenty years without interruption, shall be defeated by showing the commencement of the right within the time of legal memory; and where the right shall have existed forty years, it shall be absolute and indefeasible, unless it appears to have been enjoyed by licence, by deed, or writing. The right must be proved by user down to the time of the commencement of the action; and therefore, if there be no proof of user for the last four or five years, it is insufficient. Unity of possession operates as an extinguishment of a right of way by prescription.

A private right of way may also be grounded on a special permission; as when the owner of lands grants to another a liberty of passing over his grounds, to go to

church, market, or the like, in which case the gift or grant is particular and confined to the grantee alone; it dies with the person; the grantee cannot assign it, or justify taking another person in his company.

A right of way may also arise by Act and operation of law: for if a man grant a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives a way to come at it, and the grantee may cross the grantor's land without being a trespasser. A way of necessity is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases.

Disturbance of way happens when a person, who has a right of way over another's grounds, by grant or prescription, is obstructed by inclosures or other obstacles, or by ploughing across it, by which means he cannot enjoy the right of way, or at least not in so commodious a manner as he might have done. The remedy is usually by action on the case for damages. A right of way is often contested in an action of trespass. The remedy for the want or repair or obstruction to public highways is by indictment. Consult *Gale on Easements*.

Way-bill, a writing in which is set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land.

Way-going crops. See AWAY-GOING CROPS.

Waynagium, implements of husbandry.—1 *Reeves*, c. v., 268.

Weald, Wald, Walt [Sax.], a wood or grove.—*Cowel*.

Wealreaf, the robbing of a dead man in his grave.

Wealth, all useful or agreeable things which possess exchange-value, or, in other words, all useful or agreeable things except those which can be obtained in the quantity desired without labour or sacrifice.—1 *Mill's Pol. Eco.* 10.

Wear, or **Weir**, a great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.—*Cowel*. Prohibited by Magna Charta and other early statutes in *navigable* rivers.—*Lord Leconfield* v. *Earl of Lonsdale*, *L. R.* 5 *C. P.* 657. Prohibited for the purpose of catching salmon, by the Salmon Fishery Act, 1861, 24 & 25 Vict. c. 109, unless 'lawfully in use at the time of the passing of that Act by virtue of a grant or charter or immemorial usage.'

Wear and Tear, Reasonable, the waste of substance by the ordinary use of it. This expression commonly occurs in connection with leases, in which the lessee agrees to return the subject matter of the lease at the end of the lease in the same state as it was at the beginning of it, 'reasonable wear and tear excepted'; as to the meaning of which see per *Lindley, L. J.*, in *Manchester Bonded Warehouse Co.* v. *Carr*, 5 *C. P. D.* at p. 513.

Wed [Sax.], a covenant or agreement.—*Cowel*.

Wedbedrip, the customary service which inferior tenants paid to their lords in cutting down their corn, or doing other harvest duties.—*Cowel*.

Wedding-rings. As to the assaying and marking of gold wedding-rings, see 18 & 19 Vict. c. 60, s. 1.

Weighage, a toll or duty paid for weighing merchandise.

Weight of evidence, such superiority in the evidence for one side over that for the other as calls for a verdict for the first. When a new trial is asked for on the ground that the verdict is against the weight of the evidence, the judge who tried the cause is consulted, and it does not very often happen that a new trial is ordered if he reports that he is satisfied with the verdict. When the sum in dispute is under 20*l.*, in an action *ex contractu*, a new trial is not granted on this ground, and the Court is generally indisposed to take this step unless the amount at issue is considerable or the moral interest great.

Weights and measures, instruments for reducing the quantity and price of merchandise to a certainty, that there may be the less room for deceit and imposition. See AVOIRDUPOIS and TROY WEIGHT.

The adjustment of weights and measures is a prerogative of the Crown, and has from an early date been regulated by statute. The Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, consolidates and repeals twenty-two prior enactments on the subject, the more important of which were 4 Geo. IV. c. 74; 5 & 6 Wm. IV. c. 63; 16 & 17 Vict. c. 29; 22 & 23 Vict. c. 56; 24 & 25 Vict. c. 75, s. 6 (as to the appointment of inspectors of weights and measures in municipal boroughs); 25 & 26 Vict. c. 76, as to Ireland; and 27 & 28 Vict. c. 117, by which the use of metric weights and measures was legalised and rendered permissive. An amending Weights and Measures Act, 1889, 52 & 53 Vict. c. 21, provides for the verification of weighing instruments, authorises imprisonment for a second offence against the Acts if the offender be guilty of fraud, authorises the publication of convictions, prescribes that coal is to be sold by weight only, and otherwise increases the severity of the law.

Weights of auncel. See AUNCEL WEIGHT.

Welsh mortgage [now rare], a conveyance

of an estate redeemable at any time by the mortgagor, on payment of the loan; the rents and profits of the estate being received in the meantime by the mortgagee, in satisfaction of interest, subject, however, to an account in Chancery. There is no covenant for the repayment of the loan, and the mortgagee cannot compel either redemption or foreclosure. A Welsh mortgage differs from a *vivum vadium* or vifgage, which is a conveyance of property to the creditor and his heirs, until out of the rents and profits of the estate he has satisfied the debt with interest: it was so called because neither debt nor estate was lost. The distinction between these securities is, that in the vifgage the profits are applied in the periodical reduction of the debt, while in the Welsh mortgage they are applied in satisfaction of the interest, the principal remaining undiminished. In neither, however, is the estate ever forfeited. See 2 *Br. & Had. Com.* 299.

Wend, a certain quantity or circuit of land.—*Cowel.*

Were [*capitis æstimatio*], a pecuniary compensation for any injury. See WITE.

Werelada, a purging from a crime by the oaths of several persons, according to the degree and quality of the accused.—*Cowel.*

Wergild, Weregild, Weregildum [fr. *wer*, man, and *geld*, satisfaction, Ang.-Sax.], the price of homicide or other enormous offences, paid partly to the Crown for the loss of a subject, partly to the lord whose vassal he was, and partly to the party injured or the next of kin of the party slain. This is the earliest award of damages in our law.—4 *Bl. Com.* 188. Obsolete Saxon custom.

Wesleyan (Primitive) Methodist Society of Ireland Act, 1871. See 34 & 35 Vict. c. 40.

West African Settlements. See AFRICA, COAST OF, and 34 Vict. c. 8.

West India Colonies. See WEST INDIES.

West Indian Incumbered Estates Acts, 17 & 18 Vict. c. 117, amended by 21 & 22 Vict. c. 96; 25 & 26 Vict. c. 45; 27 & 28 Vict. c. 108; 31 & 32 Vict. c. 111; and 35 & 36 Vict. c. 9.

West Indies. As to the relief of certain colonies and plantations, see 2 & 3 Wm. IV. c. 125; 5 & 6 Wm. IV. c. 51; 3 & 4 Vict. c. 40; 7 & 8 Vict. c. 17; 8 & 9 Vict. c. 50; 11 & 12 Vict. c. 38; and 19 & 20 Vict. c. 35. As to the extension of the time for repayment of a loan by the W. I. Relief Commissioners to Dominica, see 23 & 24 Vict. c. 57. As to the settlement of a loan due from Jamaica to the Imperial Government, see 25 & 26 Vict. c. 55. As to the sale of incumbered estates, see preceding title. As to regulating prisons, see 1 & 2 Vict. c. 67. As to increasing the bishoprics, see 6 Geo. IV. c. 88, 5 & 6 Vict. c. 4. As to the extending the laws of Antigua to Barbuda, see 22 & 23 Vict. c. 13. As to appeal courts, see 13 & 14 Vict. c. 15.

Westminster, a city by express creation of Henry VIII. It was dissolved as a see and restored to the bishopric of London by Edward VI., and turned into a collegiate church, subject to a dean, by Queen Elizabeth. The Superior Courts sat here until 1822 in Westminster Hall itself, and after 1822 in courts opening into it; the Court of Chancery only upon the first day of certain sittings, after which it sat at Lincoln's Inn. The same course was observed under the Judicature Act by the Divisions representing the respective Courts until the opening of the Royal Courts of Justice (see that title).

It is provided by many Acts of Parliament, e.g., by the County Court Act, 1850, 13 & 14 Vict. c. 61, s. 14, which gives an appeal from a county court, that certain jurisdiction shall be exercised by the Courts 'at Westminster.' All such Acts are, by s. 18 of the Courts of Justice Building Act, 1865, 28 & 29 Vict. c. 48, to be construed as if the Royal Courts of Justice had been referred to therein instead of the Courts at Westminster.

Westminster Confession, a document containing a statement of religious doctrine, concocted at a conference of British and Continental Protestant Divines at Westminster in the year 1643, which subsequently became the basis of the Scotch Presbyterian Church.

Westminster the First, 3 Edw. I. A.D. 1275. This statute, which deserves the name of a Code rather than an Act, is divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the Church from the violence and spoliation of the king and the nobles, provides for freedom of popular elections, because sheriffs, coroners, and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made to influence the election of knights of the shire, from the time when they were instituted. It contains a declaration to enforce the enactment of Magna Charta against excessive fines, which might operate as perpetual imprisonment; enumerates and corrects the abuses of tenures, particularly as to marriage of wards; regulates the levying of tolls, which were imposed arbitrarily by the barons, and by cities and boroughs; corrects and restrains the power of the king's escheator

and other officers; amends the criminal law, putting the crime of rape on the footing to which it has been lately restored, as a most grievous but not capital offence, and embraces the subject of procedure, civil and criminal matters, introducing many regulations to render it cheap, simple, and expeditious.—*Lord Campbell's Lives of the Chancellors*, v. 1, p. 167; 2 *Reeves*, c. 9, p. 107. Certain parts of this Act are repealed by the Statute Law Revision Act, 1863, 26 & 27 Vict. c. 125.

Westminster the Second, 13 Edw. I. st. 1, A.D. 1285; otherwise called the Statute *De donis conditionalibus*; see TAIL. 2 *Reeves*, c. 10, p. 163. Certain parts of this Act are repealed by 19 & 20 Vict. c. 64, and 26 & 27 Vict. c. 125.

Westminster the Third, 18 Edw. I. st. 1, A.D. 1290; otherwise called the Statute *Quia emptores terrarum*.

Westmoreland, the shrievalty of, was hereditary in the family of the Earl of Thanet, and descended to females as well as males. Anne, Countess of Pembroke, exercised this office in person, and, at the assizes at Appleby, sat with the judges on the bench.—*Co. Litt.* 326 n. After the death of the Earl of Thanet, in 1849, without issue, an Act was passed abolishing all hereditary claims and titles to the office, and empowering Her Majesty to appoint as in other counties. See 13 & 14 Vict. c. 30.

West-Saxon-lage, the laws of the West Saxons.—*Cowel.*

Whale, a royal fish, the head being the King's property, and the tail the Queen's.

Wharf, a broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water.

There are two kinds:—1st, *legal*, which are certain wharves in all seaports, appointed by commission from the Court of Exchequer, or legalised by Act of Parliament; 2nd, *sufferance*, which are places where certain goods may be landed and shipped, by special sufferance granted by the Crown for that purpose. —2 *Steph. Com.* As to larcenies from, see 24 & 25 Vict. c. 96, ss. 63, 64.

Wharfage, money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence.

Wharfinger, he that owns or keeps a wharf, and takes care of goods for shipment or delivery. He has a general lien for the balance of his account. In some cases, as where he conveys goods from his wharf to vessels in lighters, he is a common carrier. Consult *Chitty* or *Addison on Contracts.*

Wheelage, duty or toll paid for carts, etc., passing over certain ground.—*Cowel.*

Whereas, a word which implies a recital of a past fact. The word *whereas*, when it renders the deed senseless or repugnant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible. See *Platt on Covts.* 35.

Whichwood Forest. As to the disafforesting of this, see 16 & 17 Vict. c. 36, and 19 & 20 Vict. c. 32.

Whig, *sour milk.* The name was applied in Scotland, A.D. 1648, to those violent covenanters who opposed the Duke of Hamilton's invasion of England in order to restore Charles the First.

The appellation of Whig and Tory to political factions was first heard of in A.D. 1679, and though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued.—2 *Hallam's Const. Hist.*, c. 12.

Whig and Tory differed mainly in this, that to a Tory the constitution, inasmuch as it was the constitution, was an ultimate point beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and, therefore, liable to change when they should cease to promote their object.

Whipping, a punishment inflicted for many of the smaller offences. By 5 & 6 Vict. striking or firing at the present Queen is punishable with whipping thrice or fewer times; and by 5 Geo. IV. c. 83, s. 10, an 'incorrigible rogue' (see VAGRANT) may be whipped.

The punishment of whipping was inflicted at common law on persons of inferior condition, guilty of petty larceny and other smaller offences. But it seems that, in the earliest periods, by the usage of the Star Chamber, it was never inflicted on a gentleman.

By 1 Geo. IV. c. 57, no female shall be whipped.

The Criminal Law Consolidation Acts, 1861 (24 & 25 Vict. cc. 96, 97, 98, 99, and 100), authorise the punishment of whipping to be inflicted upon males below 16 who have been convicted of various offences. The Court must specify the number of strokes and the instrument, and the whipping must be private, and only once inflicted. The 25 Vict. c. 18 enacts, that where the punishment is awarded by order of a justice by summary conviction, the order shall specify the number of strokes and the instrument; and for one under 14, the number shall not exceed twelve with a birch rod; and no one shall be whipped more than once for the same offence. In Scotland no offender above 16 shall be whipped for theft or crimes against person or property (s. 2).

By 26 & 27 Vict. c. 44, robbery with violence within the meaning of 24 & 25 Vict. c. 96, s. 43, and attempting to choke with intent to commit any indictable offence within the meaning of 24 & 25 Vict. c. 100, s. 21, may be punished by whipping in addition to existing punishments.

Whirligig, or 'merry-go-round,' or 'roundabout,' if driven by steam power, bye-laws for the prevention of danger from it may be made by Urban Authority, under the adoptive Public Health Acts Amendment Act, 1890.

Whitefriars, a place in London between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest. See ALSATIA.

Whitehart Silver, a mulct on certain lands in or near to the forest of Whitehart, paid into the Exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart which that king before had spared in hunting.—*Camd. Brit.* 150.

White meats, milk, butter, cheese, eggs, and any composition of them.—*Cowel.*

White rents [*reditus albi*, Lat.], payments received in silver or white money.—2 *Br. & Had. Com.* 54; 1 *Steph. Com.*

White-spurs, a kind of esquires.—*Cowel.*

Whit Monday. See next title.

Whitsuntide, the feast of Pentecost, being the fiftieth day after Easter, and the first of the four cross-quarter days of the year.

Whit Monday is, by the 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13, made a holiday in banks, custom-houses, docks, inland revenue offices, and bonding-warehouses. Whit Monday is a holiday in the several courts and offices of the Supreme Court (R. S. C. 1883, Ord. LXIII., r. 6).

Whitsun farthings, pentecostals, which see.

Whittlewood Forest. As to disafforesting this forest see 16 & 17 Vict. c. 42.

Whole blood. 'A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors.—1 *Steph. Com.*

Wic, a place on the sea-shore on the bank of a river.

Wica, a country house or farm.—*Cowel.*

Wichencrif, witchcraft.—*Cowel.*

Widow, a woman whose husband is dead. For her claim on estate of her husband dying without a will and without issue, see Intestate Estates Act, 1890.

Widow-bench, the share of her husband's estate, which a widow is allowed besides her jointure.

Widower, one whose wife is dead.

Widow's chamber. In London the widow of a freeman was, by the custom of the city, entitled to her apparel and the furniture of her bed-chamber, but this custom was abolished by 19 & 20 Vict. c. 94.

Widow's terce, the right which a wife has after her husband's death to a third of the rents of lands in which her husband died infeft; dower.—*Bell's Scotch Law Dict.*

Wife [*wif*, Sax.; *wiff*, Dut.; *wyf*, Icel.; *uxor*, Lat.], a woman that has a husband. See HUSBAND AND WIFE.

Wife's equity. See EQUITY TO A WIFE'S SETTLEMENT.

Wigreve, the overseer of a wood.—*Cowel.*

Wike, a farm.—*Co. Litt.* 5 a.

Wild animals, or animals *feræ naturæ*, animals of an untamable disposition. See FERÆ NATURÆ.

Wild Birds. See BIRDS.

Wild's Case, Rule in. A devise to B. and his children or issue, B. having no issue at the time of the devise gives him an estate tail; but if he have issue at the time, B. and his children take joint estates for life.—6 *Co.*, 16 *b*; *Tud. L. C. on Real Property*, 2nd ed., 542, 581.

This case does not apply to personalty. See *Audsley* v. *Horn*, 7 *W. R.* 125, affirmed on app. 8 *W. R.* 150; 2 *Jarm. Wills*, 4th ed., 389 *et seq.*

Will, 'the legal declaration of a man's intentions, which he wills to be performed after his death' (see 2 *Bl. Com.* 499). It is said by Lord Coke that 'in law most commonly *ultima voluntas in scriptis* is used when lands or tenements are devised, and *testamentum* when it concerneth chattels' (*Co. Litt.* 111 *a*). Swinburne defines a last will and testament to be 'the just sentence of our will touching what we would have done after our death.' The law as to wills made before 1st of January, 1838, is regulated by 7 Wm. IV. and 1 Vict. c. 26, commonly called the Wills Act, which does not extend to Scotland.

This important and comprehensive statute deals with four classes of subjects touching wills, viz.:—

(1) Who may execute a will.
(2) What may be the subject matter of wills.
(3) What are the formalities required in the execution of a will.
(4) How wills are to be construed.

These subjects are not dealt with by the statute exactly in the above order, the second being taken first (s. 3).

The *first* section enacts, that the word 'will' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and to a disposition by will and testament or devise of the custody and tuition of any child,

by virtue of the 12 Car. II. c. 24, or of 14 & 15 Car. II. (Ireland), and to any other testamentary disposition, and also defines the meaning of the words 'real estate' and 'personal estate' as used in the Act.

The *second* section repeals (amongst others) prior Acts relating to wills.

The *third* section, termed the 'general enabling clause,' enacts that it shall be lawful for every person to devise, bequeath, or dispose of real estate, and all personal estate which he shall be entitled to at the time of his death.

The *fourth* and *fifth* sections relate to dispositions of copyhold estates.

The *sixth* section enacts, that if no disposition by will be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy; as assets by descent, as in the case of freehold land in fee simple; and in the case of there being no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant-right, customary, or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant, and if it comes to the executor or administrator either by reason of a special occupancy, or by virtue of this Act, it shall be assets in his hands, and shall be applied and distributed in the same manner as the personal estate of the testator or intestate. See SPECIAL OCCUPANCY.

As to the persons who may make wills:—

The *seventh* section enacts, that no will made by any person under the age of twenty-one years shall be valid. Under the old law, an infant of the age of fourteen years, if a male, or of twelve years if a female, could make a valid will of personalty, although not of realty. Infants could also by will execute powers simply collateral, i.e., not coupled with an interest, and appoint guardians of their children.

At Common Law, idiots, lunatics (except during lucid intervals), persons imbecile from disease, old age, or drunkenness, are incapable of making a will. One who is born deaf and dumb is presumed by the law to be an idiot, but such presumption may be rebutted; and if it can be proved that he understands the nature of the act, and desires to make a will, he may declare his will by signs and tokens. In the case of a blind testator, it is necessary to prove his knowledge and approval of the contents of the will he has executed. Wills made under mistake, or obtained by fraud, or by undue influence, are inoperative. See MISTAKE; FRAUD; UNDUE INFLUENCE.

By section *eight*, no will made by any married woman shall be valid, *except* such a will as might have been made by a married woman before the passing of the Act; but this section is impliedly repealed by the Married Women's Property Act, 1882. See MARRIED WOMEN'S PROPERTY.

3rdly. *As to how wills are to be executed*:—The *fourteenth* section enacts, that if any person, who shall attest the execution of a will, shall, at the time of the execution, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

The *fifteenth* section enacts, that if any person who shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, etc., shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person, so attesting, shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, etc.

The *sixteenth* section enacts, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

The *seventeenth* section enacts, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

The *ninth* section enacts, 'that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator: but no form of attestation shall

be necessary.' See further EXECUTION OF WILLS.

The *eleventh* section excepts from the rule that all wills must be in writing, wills of personal estate made by soldiers in actual military service, or seamen at sea. This exception includes military and naval officers of all ranks.

With regard to the revocation of wills, it is enacted by the *eighteenth* section, 'that every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions'; by the *nineteenth* section, 'that no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances'; by the *twentieth* section, 'that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in the manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same'; and by the *twenty-third* section, 'that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.'

The *twenty-first* section relates to obliterations, interlineations, and other alterations in wills, and enacts, 'that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will, but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.'

With regard to the revival of a revoked will, provided for by the *twenty-second* section, see REPUBLICATION OF WILLS.

4thly. *As to the Construction of Wills*:—

As to the time from which a will speaks, the *twenty-fourth* section enacts, 'that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.'

As to the expressions necessary to execute a general power, the *twenty-seventh* section enacts, that a devise or bequest in general terms, of real or personal property, shall be construed to include any property coming within the description, which the testator may have power to appoint in any manner he may think proper, unless a contrary intention shall appear. Under the old law it was necessary that such a devise or bequest should refer either to the power or to the specific property which was the subject of it, in order that it might have that effect.

As to the devise of a fee, the *twenty-eighth* section enacts, 'that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee-simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.' Under the old law only a life estate passed, unless words were used to show an intention to pass the fee.

As to wills of personal estate by British subjects made abroad, and like wills made in a part of the United Kingdom in which the testator is not domiciled, see 24 & 25 Vict. c. 114; and see further as to the wills and domicile of British subjects dying whilst resident abroad, and of foreign subjects dying whilst resident within Her Majesty's dominions, the 24 & 25 Vict. c. 125. As to the wills of seamen of the Royal Navy and those of marines, see 28 & 29 Vict. c. 72; and as to those of soldiers, see 29 Car. II. c. 3, s. 23; 7 Wm. IV.; and 1 Vict. c. 26, ss. 11, 12. As to stealing wills, see 24 & 25 Vict. c. 96, s. 29. As to the forgery of wills, see 24 & 25 Vict. c. 98, s. 21. As to the provision for a place of deposit of original wills, see 20 & 21 Vict. c. 77, s. 66; and see generally *Jarman on Wills*; *Theobald on the Construction of Wills*; and *Chitt. Stat.*, vol. 6, tit. '*Wills*.' See also EXECUTION OF WILLS; PROBATE.

Will, Estate at. This estate entitles the

grantee or lessee to the possession of land during the pleasure of both the grantor and himself, yet it creates no sure or durable right, and is bounded by no definite limits as to duration. It must be at the reciprocal will of both parties (for if it be at the will of the lessor only, it is a lease for life), and the dissent of either determines it. The grantee cannot transfer the estate to another, although after he has entered into possession he may accept a release of the inheritance from the grantor, for there exists a privity between them. It must end at the death of either party, for death deprives a person of the power of having any will. If a lessee for years accept an estate at will in the property leased, his term of years would in law be surrendered.

An estate at will is created either by the stipulation or express agreement of the parties, or by construction of law.

The Statute of Frauds (29 Car. II. c. 3, s. 1) enacts that a lease by parol for a longer term than three years, shall have the force and effect of an estate at will only.

A tenant-at-will is entitled to emblements where his estate is determined by the lessor or by his death, and his personal representatives are entitled to them where the estate is determined by his own death; but if the lessee forfeit or determine the estate himself he is not then entitled to them. It is to be remarked that a tenant from year to year has not the same advantage if his tenancy expire before the harvest, as he must yield up possession at the regular expiration of the notice to quit, without any reference to the then state of the crops. He is not bound to maintain or repair the premises, but is liable for wilful waste.

We have seen that either party may determine this estate. The lessor can do so by an express declaration that the lessee shall hold no longer, which should either be made on the land or notice of it served upon the lessee. But if he exercise any right of ownership, unless it be with the lessee's consent, inconsistent with the enjoyment of the estate, as entering upon the land, cutting down trees demised, making a transfer or lease for years to commence immediately, the estate will be determined. So also if the lessee commit an act of desertion or do anything inconsistent with his estate, as assigning it to another person or committing waste; but a verbal declaration that he will hold the lands no longer does not determine his estate unless he at the same time waive possession. Neither party can determine this estate at a time when it would be beneficial to the other, and six months' notice must be given before bringing an action of ejectment.

If a tenant-at-will rendering rent quarterly determine his will in the middle of a quarter he must pay a quarter's rent.

If the lessor determine his estate, the lessee shall have reasonable ingress and egress to take away his goods and chattels. This is simply common justice. See *Woodfall's Landlord and Tenant*, 14th ed., c. 6, s. 4.

Willa, the relation between a master or patron and his freed-man, and the relation between two persons who had made a reciprocal testamentary contract.—*Macnaghten's Mahomedan Law*, 34 n.

Winchester, the standard measure which was originally kept at Winchester. It is abolished by 5 & 6 Wm. IV. c. 63.

Winchester Cathedral, see CATHEDRAL.

Windas, or **Windlass.** Wanlass, which see.

Winding-up, the process by which an insolvent estate is distributed, as far as it will go, amongst the persons having claims upon it. The term is most frequently applied to the winding-up of joint-stock companies. See, e.g., the Companies Winding-up Act, 1890, 53 & 54 Vict. c. 63, which introduces official supervision of winding-up by the Board of Trade, acting through official receivers in bankruptcy.

Window Tax, a tax on windows, levied on houses which contained more than six windows, and were worth more than 5*l.* *per annum*; established by 7 Wm. III. c. 18. The 14 & 15 Vict. c. 36, substituted for this tax a tax on inhabited houses.

Windsor forest, a royal forest founded by Henry VIII.

Wine, adulteration of, an offence against public health, formerly punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader.—12 *Car. II.* c. 25, s. 11. The penalty in both cases was increased to 300*l.* by 1 W. & M. st. 1, c. 35, s. 20. The former statute is repealed by 26 & 27 Vict. c. 125. See ADULTERATION.

Wine Licenses. See INTOXICATING LIQUORS; 23 Vict. c. 27; 23 & 24 Vict. c. 107; 32 & 33 Vict. c. 27; and 34 & 35 Vict. c. 29.

Winter circuit, originally an occasional circuit appointed for the trial of prisoners, and in some cases of civil causes, between Michaelmas and Hilary Sittings. See Winter Assize Act, 1876, and ASSIZES. But of late years the circuit held in Spring has been termed the 'Winter Circuit.'

Winter heyning, the season between 11th November and 23rd April, which is excepted from the liberty of commoning in certain forests.—23 *Car. II.* c. 3.

Wires, Overhead. For power of urban authority to make bye-laws for prevention of danger, or obstruction from overhead telegraphic wires, under the adoptive Public Health Acts Amendment Act, 1890, see Part II. of that Act.

Wisbuy, Ordinances of, a code of maritime jurisprudence compiled at this place, in the Isle of Gothland, principally from the law of Oleron, in the year 1400, for the governance of the Baltic traders. See 3 *Hallam's Middle Ages*, c. 9, pt. 2, p. 334.

Wista, half a hide of land, or sixty acres.

Wit, To [*scilicet*, or *videlicet*, or *viz.*, Lat.], to know, that is to say, namely.

Witam, the purgation from an offence by the oath of the requisite number of witnesses.

Witchcraft, conjuration; sorcery.

No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence; but all persons pretending to use the same shall be punishable by imprisonment.—9 *Geo. II.* c. 5; 5 *Geo. IV.* c. 83, s. 4. See VAGRANT.

Wite [Sax.], a punishment, pain, penalty, mulct, or criminal fine.—*Cowel.*

The *wite* was a penalty paid to the Crown by a murderer. The *were* was the fine a murderer had to pay to the family or relatives of the deceased, and the *wite* was the fine paid to the magistrate who presided over the district where the murder was perpetrated. Thus, the *wite* was the satisfaction to be rendered to the community for the public wrong which had been committed, as the *were* was to the family for their private injury.—*Bosworth's Anglo-Saxon Dict.*

Witekden, a taxation of the West Saxons, imposed by the public council of the kingdom.

Witena-gemot, or **Wittena-gemote** [fr. *witta*, Sax., a wise man, a *gemot*, a synod or council, *conventus, sapientum*, Lat.], a convention or general assembly of great and wise men to advise and assist the sovereign in the time of the Saxons, answering to our parliament.—2 *Hallam's Middle Ages*, c. 8, pt. 1, 279. See FOLK MOTE, and PARLIAMENT.

Witens, the chiefs of the Saxon lords or thanes, their nobles and wise men.

Withdrawal of juror, when a jury cannot agree upon a verdict, one of them is often withdrawn by consent of the litigants, so as to put an end to the proceedings, each party paying his own costs.—*Chit. Arch. Prac.*, 12th ed., i. 408, ii. 1383, 1386.

Withernam [fr. *wieder*, Sax., other, and *naam*, a taking,], reprisals. See CAPIAS IN WITHERNAM.

Withersake, an apostate, or perfidious renegade.—*Cowel.*

Without impeachment of waste. See ABSQUE IMPETITIONE VASTI.

Without prejudice, a phrase used in negotiations of compromise, or offers to settle differences *causâ pacis*, in order to guard against any waiver of right should they be ineffectual and go off.

Without recourse to me [*sans recours*], a phrase used by an agent who endorses a bill or note for his principal, which protects him from liability.—*Byles on Bills*, 10th ed., 38, 152.

Without reserve. When property is thus announced to be sold, a puffer ought not to be appointed.—*St. Leon. V & P.* 8.

Witness, one who gives evidence in a cause.

A witness must attend in court according to the requirement of his subpœna. If he has not been paid his lawful expenses, he may refuse to be sworn; but if he be once sworn, he must give his evidence. See OATH and AFFIRMATION.

A witness is not obliged to answer any question which tends to criminate him.

On the application of either party, all the witnesses on both sides are ordered to leave the court until called; and each is only called when his evidence is actually required. If a witness who has been ordered out of court remains, it is a contempt, if wilful, and may be treated as such; but his evidence is not rejected. Each witness remains in court after he has given his evidence, and is expected not to communicate with those outside. But every party to the cause is entitled to be present throughout; though he be about to give evidence. The application is made either before the opening of the case, or before the first witness is called.

A witness cannot leave the precincts of the court without leave after the evidence of his side is over, nor even when the judge has begun to sum up, for any witness may at the discretion of the judge be recalled at any time before the verdict is given. See especially title EVIDENCE; and see also SUBPŒNA; VOIR DIRE; SECONDARY EVIDENCE; PERJURY; TRIAL; CONTEMPT; VIATICUM. As to witnesses to character, see CHARACTER.

Wittena-gemote. See WITENA-GEMOT.

Wold [Sax.], a down or open country.—*Cowel.*

Wolfeshead, or **Wolferhefod** [Sax.], the condition of such as were outlawed in the time of the Saxons, who if they could not be taken alive to be brought to justice might be slain, and their heads brought to the king; for they were no more accounted of than a wolf's head.—*Bract.* 1, 3.

Woman [A.-S., *wif-man*, *man* being a general term to include each sex, the name *wif-man* was given to the female from her employment at the woof.—*Rich. Dict.*], the female of human kind. By 13 & 14 Vict. c. 21, s. 4, which applies to all Acts of Parliament passed in subsequent sessions, words importing the masculine gender shall include females unless the contrary is expressly provided. As to employment of women in factories, see Factory and Workshop Act, 1878; and the Coal Mines Act, 1887, and the Metalliferous Mines Act, 1872, as to employment in Coal and Metalliferous Mines; and Agricultural Gangs Act, 1867, 30 & 31 Vict. c. 130, s. 4, as to employment in Agricultural Gangs. A woman may be elected to the office of sexton (*Olive* v. *Ingram*, 7 *Mod.* 263); or governor of a workhouse (*Anon.*, 2 *Lord Raym.*, 1014); or overseer (*R.* v. *Stubbs*, 2 *T. R.* 395); or guardian of the poor; and she may be a member of the school board. But no woman has ever sat on a town council, and it is conceived that she is ineligible thereto (though the point has never arisen for judicial decision). The question of her eligibility to a County Council, raised by petition by reason of the election of Lady Sandhurst as a councillor for the county of London, has been decided against her. A woman is entitled, if unmarried (*Reg.* v. *Harrald*, *L. R.* 7 *Q. B.* 361), to vote at municipal elections (Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 63, replacing the repealed 32 & 33 Vict. c. 55, s. 9), and at elections of county councillors (County Electors Act, 1888, 51 Vict. c. 10, s. 1, subs. 2), but not at elections for members of parliament.—*Chorlton* v. *Lings*, *L. R.* 4 *C. P.* 374.

As to the professions, qualifications for registration under the Medical Act may be granted without distinction of sex by 39 & 40 Vict. c. 41, and a woman may practise as a conveyancer, but not, it is conceived, as a barrister or solicitor.

At Common Law words imputing unchastity to a woman required special damage to render them actionable; but this injustice has been put an end to by the Slander of Women Act, 1891, 54 & 55 Vict. c. 51.

Wong [Sax.], a field.—*Spelman.*

Wood-corn, a certain quantity of grain paid by the tenants of some manors to the lord for the liberty to pick up dried or broken wood. —*Cowel.*

Wood-geld, the cutting of wood within the forest, or rather the money paid for the same. —*Cowel.*

Woodmote, the forty-days' court, which see.

Wood-Plea-Court, a court held twice in the year in the forest of Clun in Shropshire, for determining all matters of wood and agistments.—*Cowel.*

Woodwards, officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offences relating to the same.—*Manw.* 189.

Woolmer Forest, as to disafforesting it see 18 & 19 Vict. c. 46. See also as to leasing, 18 & 19 Vict. c. 16; and as to timber, 52 Geo. III. c. 71, and 18 & 19 Vict. c. 46.

Woolsack, the seat of the Lord Chancellor in the House of Lords. When, in the reign of Elizabeth, an Act of Parliament was passed to prevent the exportation of wool, to keep in mind this source of our national wealth woolsacks were placed in the House of Lords, whereon the judges sat.

Words. See DEFAMATION.

Work of Art. See ART.

Workhouses, municipal institutions for the support and maintenance of paupers. See POOR LAWS.

Working Classes, the classes earning their livelihood by manual labour. The term is specially and variously defined by various Acts of Parliament for the purposes (all of them similar) of those Acts. See the Metropolitan Police Act, 1886, s. 5, subs. 7, for definition of 'labouring classes,' the Municipal Corporations Act, 1882, s. 111, the Settled Land Act, 1890, s. 18, and Housing of the Working Classes Act, 1890, s. 75, for definition of 'working classes.'

The Housing of the Working Classes Act, 1890, 53 & 54 Vict. c. 70, consolidates the Housing of the Working Classes Act, 1885, 48 & 49 Vict. c. 72, and many previous Acts passed to promote the healthy housing of the working classes, with some amendments. See LABOURERS' DWELLINGS.

The Working Classes' Dwellings Act, 1890, 53 & 54 Vict. c. 16, facilitates gifts of land for dwellings for the working classes in populous places, by exempting such gifts up to five acres from the Mortmain and Charitable Uses Act, 1888. See MORTMAIN.

Workmen, Arbitration between Masters and. See ARBITRATION BETWEEN MASTERS AND WORKMEN.

Workshop Regulation Acts, 30 & 31 Vict. c. 144, amended by 34 Vict. c. 19, and 34 & 35 Vict. c. 104, repealed and replaced by the Factory and Workshop Act, 1878, s. 93 of which defines 'workshop' for the purposes of the Act. The Factory and Workshop Act, 1891, 54 & 55 Vict. c. 75, has increased the Government control over workshops. See FACTORY.

Worship, a title of respect applied to a magistrate. See also PUBLIC WORSHIP.

Wort, or **Worth** [fr. *weorth*, Sax.] a curtilage or country farm.

Worthing of land, a certain quantity of land so called in the manor of Kingsland in Hereford; the tenants are called worthies.

Worts (*export of*).—29 & 30 *Vict.* c. 64.

Wound, any lesion of the body, whether cut, bruise, contusion, fracture, dislocation, or burn. In surgery it is confined to a solution of continuity in any part of the body, suddenly caused by anything that cuts, or tears, with a division of the skin.

The judicial questions which arise in cases of wounding (which is an aggravated species of battery) where death ensues are:—How far has the person who caused the injury contributed to the death of the deceased, or to the lesion of the functions of the body? And to what is a certain wound to be referred? Circumstances as well as accident have a considerable effect on wounds:—(1) The constitution and age of the patient, and his antecedent as well as co-existent maladies, may exercise a baneful influence on the injury received. (2) The passions of the patient and his negligence or delay, or that of his attendants, may render slight wounds dangerous, or dangerous wounds mortal. (3) Insalubrity of the atmosphere. (4) The ignorance or negligence of the surgeon may aggravate or endanger the condition of a wounded patient.—*Beck's Med. Jur.* c. 15. See MAYHEM; and *Steph. Com.*, 7th ed., iii. 373; iv. 81.

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur.—(A wreck of the sea signifies those goods which are driven to shore from a shipwreck).

Wreck, such goods as after a shipwreck are cast upon the land by the sea, and left there within some county, for they are not wrecks as long as they remain at sea in the jurisdiction of the Admiralty.—2 *Inst.* 167. If any live thing escape, or if proof can be made of the property of any of the goods or lading which come to shore, they shall not be forfeited to the Crown as wreck. The sheriff of the county is bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of representation, they shall be restored to him without delay; but if no such property be proved within that time, they shall then go to the Crown. If the goods be of a perishable nature the sheriff may sell them, and the money shall be liable in their stead.—1 *Bl. Com.* 292; *Stat. West* 1st, 3 *Edw. I.* c. 4. And see Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, pt. 8, ss. 432—457, 471—479, 500 and amending enactments.—*Chit. Stat.* vol. 5, tit. '*Shipping*.'

This revenue of wrecks is frequently granted to lords of manors as a royal franchise. It is a branch of the coroner's office to inquire concerning shipwrecks and certify whether there has been a wreck or not, and who is in possession of the goods.

The offence of plundering or stealing any part of vessels wrecked, stranded, or cast on shore, or any goods, etc., belonging to such vessel, is a felony (24 & 25 Vict. c. 96, s. 64). Persons in possession of shipwrecked goods who cannot satisfy a justice that they came by them lawfully, may be imprisoned or forfeit 20*l.* beyond the value (s. 65). A similar punishment is attached to the offence of offering or exposing shipwrecked goods for sale which have been, or shall reasonably be suspected to have been, taken from the wreck, if the person offering or exposing them do not satisfy a justice that he came by them lawfully (s. 66). The offence of unlawfully and maliciously destroying any part of a wreck, or any goods, etc., belonging to it, is a felony (24 & 25 Vict. c. 97, s. 49).

As to impeding a person saving his own or another's life from a wreck, see 24 & 25 Vict. c. 100. s. 17. As to assaulting a magistrate, officer, etc., engaged in preserving a wreck or goods cast on shore, see s. 37 of that Act.

The Removal of Wrecks Act, 1877, 40 & 41 Vict. c. 16, gives power to harbour and conservancy authorities to remove wrecks obstructing navigation, and an amending Act of 1889, 52 Vict. c. 5, extends the protection from obstruction to lifeboats engaged in lifeboat service.

Wreck-free, exemption from the forfeiture of shipwrecked goods and vessels, which the Cinque Ports enjoy by a charter of Edward I.

Writ [fr. *breve*, Lat.], a judicial process, by which any one is summoned as an offender; a legal instrument to enforce obedience to the orders and sentences of the Courts. For the particular writs see their distinctive names, as assistance, capias, etc.

The 3 & 4 Wm. IV. c. 27, abolished a great number of writs. It enacted (s. 36), that 'no writ of right patent, writ of right *quia dominus remisit curiam*, writ of right *in capite*, writ of right in London, writ of right close, writ of right *de rationabili parte*, writ of right of advowson, writ of right upon disclaimer, writ *de rationabilibus divisis*, writ of right of ward, writ *de consuetudinibus et servitiis*, writ of *cessavit*, writ of escheat, writ of *quo jure*, writ of *secta de molendino*, writ of *de essendo quietum de thelonio*, writ of *ne injuste vexes*, writ of *mesne*, writ of *quod permittat*, writ of *formedon in descender*, *in remainder*, or *in reverter*, writ of assize of *novel*

disseisin, nuisance, *darrein presentment*, *juris utrum* or *mort d'ancestor*, writ of entry *sur disseisin* in the *quibus*, in the *per*, in the *per* and *cui*, or in the *post*, writ of entry *sur intrusion*, writ of entry *sur alienation*, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisonâ ad communem legem*, *in casu proviso*, *in consimili casu*, *cui in vitâ*, *sur cui in vitâ*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur abatement*, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præteriit* or *causâ matrimonii prælocuti*, writ of *aiel*, *besaiel*, *tresaiel*, *cosinage*, or *nuper obiit*, writ of waste, writ of partition, writ of *disceit*, writ of *quod ei deforceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia claudenda*, or writ *per quæ servitia*, and no other action real or mixed (except a writ of right or dower *unde nihil habet*, or a *quare impedit*, or an ejectment), and no plaint in the nature of any such writ or action, except a plaint for freebench or dower, shall be brought after the 31st day of December, 1834.'

Writ of Trial. See 3 & 4 Wm. IV. c. 42, s. 17, repealed by 30 & 31 Vict. c. 142, s. 6.

Writer of the Tallies, an officer of the Exchequer, who acted as clerk to the auditor of the receipt, who wrote upon the tallies the teller's bills.

Writers to the Signet, abbrev. W. S., also called *clerks to the signet*. A legal body who perform in the supreme courts of Scotland duties analogous to those of the attorney and solicitor in England. They have various privileges, particularly as to the signeting (sealing) of summonses, the issuing of warrants of imprisonment, etc. See further *Bell's Scotch Law Dict.*, *voce* CLERK TO THE SIGNET, and 31 & 32 Vict. c. 100.

Writing, in any Act of Parliament, includes printing, lithographing, etc.—*Interpretation Act*, 1889, s. 20.

Writings obligatory, bonds. See BOND.

Writs for the election of Members of Parliament. The speaker of the House of Commons is empowered to issue warrants, during any recess of the house, for making out new writs for the election of persons in the room of members accepting certain offices. See 24 Geo. III. c. 26; 56 Geo. III. c. 144; 21 & 22 Vict. c. 110; and 26 Vict. c. 20.

Writs of Execution. See EXECUTION.

Writs of Inquiry. See INQUIRY.

Writs, Renewal of. See RENEWAL OF WRITS.

Writs of Summons. See SUMMONS.

Wrong, the privation of right, an injury, a designed or known detriment.

Wrongous imprisonment, false imprisonment.—*Scotch phrase.*

Wynton, Statute of. 13 Edw. I. st. 2, A.D. 1285.

Wyte. See WITE.

X.

Xenodoceum, or **Xenodocheum**, an inn, an hospital.—*Cowel.*

Xenodochy [fr. ξενοδοχία, Gk.], reception of strangers: hospitality.—*Encyc. Lond.*

Xylon [fr. ξύλον, Gk.], a punishment among the Greeks answering to our stocks.

Y.

Yard [fr. *geard*, Sax.], an enclosed space of ground, generally attached to a dwelling-house, etc.; also a measure of three feet, or thirty-six inches in length.

Yarland [*virgata terræ*, Lat.], a quantity of land differing in extent in different parts of the country.—*Cowel.*

Year [fr. *gear*, Sax.], the period in which the revolution of the earth round the sun is completed. Generally, when a statute speaks of a year, it must be considered as twelve calendar and not lunar months.—*Bishop of Peterborough* v. *Catesby*, *Cro. Jac.* 166.

The year is either astronomical, ecclesiastical, or regnal, beginning on the 1st of January, or Advent Sunday, or the day of the Queen's accession, respectively.—*Dug. Chron. Jur. Pref.* 2. See CALENDAR.

The division of the year into term and vacation has been the joint work of the church and necessity. The cultivation of the earth was deemed to require a time of leisure from all attendance on civil affairs; and the laws of the church had, at various times, assigned certain seasons of the year to an observance of religious peace, during which time all legal strife was strictly interdicted. What remained of the year not disposed of in this manner, was allowed for the administration of justice. The Anglo-Saxons had been governed by these two reasons in distinguishing the periods of vacation and term; the latter they called *dies pacis regis*; the former *dies pacis Dei et sanctæ ecclesiæ*. The usages of the Saxons were adhered to by the Normans. —1 *Reeves*, c. 4, p. 191. See TERM.

Year-books, or **Books of years and terms**, reports, in a regular series, from the time of King Edward II. to Henry VIII. which were taken by the prothonotaries or chief scribes of the courts, at the expense of the Crown, and published annually; hence their

denomination. The year-books are rather curious from their antiquity than valuable for their contents, which are undigested and loosely revised.—*Hale's Hist.*, p. 198; 2 *Reeves*, 357; 4 *Ibid.*, 414. See REPORTS.

Year and day [*annus et dies*, Lat.], a time that determines a right or works a prescription, etc., in many cases; e.g., unless a party die of a stroke inflicted within a year and a day, it is not killing by the striker.

Year, day, and Waste [*annus, dies, et vastum*, Lat.], a part of the royal prerogative, whereby the Crown had, for a year and a day, the profits of lands and tenements of those that were attainted of petit treason or felony, whosoever was lord of the manor whereto the lands or tenements belonged; and the right to cause waste to be made on the tenements by destroying the houses, ploughing up the meadows and pastures, rooting up the woods, etc. (unless the lord of the fee agreed for the redemption of such waste), afterwards restoring them to the lord of the fee.—*Staund. Prærog.* 44. This prerogative was abolished by the 54 Geo. III. c. 145. See ESCHEAT.

Year to year, Tenancy from. This estate arises either expressly, as when land is let from year to year, or by a general parol demise, without any determinate interest, but reserving the payment of an annual rent; or impliedly, as when property is occupied generally under a rent payable yearly, half-yearly, or quarterly; or when a tenant holds over, after the expiration of his term, without having entered into any new contract, and pays rent (before which he is tenant on sufferance).

The qualities that distinguish it from proper terms for years, and from estates at will, are that it may now be raised by construction of law alone, instead of an estate at will in every instance where a possession is taken with the consent of the legal owner, and where an annual rent has been paid, but without there having been any conveyance or agreement conferring a legal interest; and that, whether it arises from express agreement, or by implication of law, it may, unless surrendered or determined by a regular notice to quit, subsist for an indefinite period, if the estate of the lessor will allow of it, or for the whole term of his estate, where it is of a limited duration, unaffected by the death either of the lessor or lessee, or by a conveyance of their estate by either of them; and the assigns, or real or personal representatives, of the former, according to the quantity of his estate, and the assignee, or personal representatives, of the latter, still continue the tenancy upon the original terms, and subject to the same conditions which the law, or the express agreement of the parties, has attached to it. But it is liable at any time to be determined by a notice to quit from either party, which, where there is no agreement, or where the agreement is silent on that point, must be at least *half a year's* (*not merely six months'*), or where the Agricultural Holdings Act applies, *one year's notice* to give up possession at the expiration of the year, computing from the time when the tenancy commenced. A parol notice is sufficient, unless the agreement requires it to be in writing (per *Lord Ellenborough*, C. J., in *Doe* v. *Crick*, 5 *Esp. N. P. C.* 197); but for the sake of evidence it is always advisable to give a written notice.

Years, estate for. See TERM FOR YEARS.

Yelverton's Act. An Act of the Irish Parliament, 21 & 22 Geo. III. c. 48, extending the principle of 'Poynings' Act' (*which see*) to private estate Acts and certain shipping Acts.

Yeme [fr. *hiems*, Lat.], winter.—*Cowel.*

Yeoman, or **Yoman** [fr. *guma*, Sax.; *gommans*, Theotise], a man of a small estate in land; a farmer, a gentleman farmer; also, a 40*s.* freeholder not advanced to the rank of a gentleman; the highest order among the plebeians.—2 *Inst.* 668.

Yeomanry, the collected body of yeomen.

Yeomanry Cavalry, a denomination given to those troops of horse which were levied among the gentlemen and yeomen of the country, upon the same principle as the Volunteer companies. See 44 Geo. III. c. 54; 23 Vict. c. 13; 1 *Br. & Had. Com.*, 496; and 2 *Steph Com.*; and see now the National Defence Act, 1888, 51 & 52 Vict. c. 31. As to the former powers of the Lords Lieutenant of counties in reference to this force, see title LORD LIEUTENANT.

Yeomen of the Guard, properly called yeomen of the guard of the royal household; a body of men of the best rank under the gentry, and of a larger stature than ordinary, every one being required to be six feet high.—*Encyc. Lond.* As to their establishment, see 2 *Hall. Const. Hist.*, c. 9.

Yeven, or **Yeoven**, given; dated.—*Cowel.*

Yielding and **Paying**, the first words of the *reddendum* clause in a lease.

Yokelet [fr. *jocelet*, Sax.] a little farm, requiring but a yoke of oxen to till it.

York, Province of. Its special customs are abolished by 19 & 20 Vict. c. 94.

York, Statute of, 12 Edw. II. st. 1, A.D. 1318.—2 *Reeves*, c. 12, p. 299.

Yorkshire Registry Act, 1884, 47 & 48 Vict. c. 54, consolidating and amending the Acts relating to the registration of deeds, wills, and other assurances in the North (8 Geo. II. c. 6), East (6 Anne c. 2), and West

(2 & 3 Anne c. 4, and 6 Anne c. 20) Ridings of the county of York, for the purpose of giving them priority according to the date of registration.

Yule [fr. *jule*, Dan.; *gehul*, *geola*, *geol*, Sax.], the times of Christmas and Lammas.

Z.

Zanzibar. As to the slave trade, see 32 & 33 Vict. c. 75.

Zemindar [fr. two words signifying earth, land, and holder or keeper], land-keeper. An officer who under the Mahommedan government was charged with the financial superintendence of the lands of a district, the protection of the cultivators, and the realisation of the government's share of its produce, either in money or kind.—*Indian.*

Zemindarry, the office and jurisdiction of a zemindar.—*Ibid.*

Zenana, that part of a house which is set apart for women.—*Ibid.*

Zetetick [fr. ζητέω, Gk.], proceeding by inquiry.—*Encyc. Lond.*

Zigari, or **Zingari**, rogues and vagabonds in the middle ages; from Zigi, now Circassia.

Zillah, side-part, district, division. A local division of a country having reference to personal jurisdiction.—*Indian.*

Zillah Court, local or divisional court.—*Ibid.*

Zoll-verein, a union of German States for uniformity of customs. It began in 1819 by the union of Schwarzburg-Sondershausen, and until the unification of the German Empire included Prussia, Saxony, Bavaria, Wurtemburg, Baden, Hesse-Cassel, Brunswick, and Mecklenberg-Strelitz, and all intermediate principalities. This union has now been superseded by the formation of the new German Empire; and the Federal Council of the Empire has taken the place of the Federal Council of the Zoll-verein.

Zygostates [fr. ζυγοστάτης, Gk.], the clerk of a market, who examines the weights and measures, a scalesman.—*Spelm.*

Printed by Hazell, Watson, & Viney, Ld., London and Aylesbury.

/ 4

W

VG WL PJd9
Wharton's Law-lexicon :
Stanford Law Library
3 6105 044 574 833